

# THE COUNCIL OF STATE

(1919-1947)

## ITS ORGANISATION AND WORKING

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therefore, embedded in that very historic statement which reset the scale of our constitutional progress.

One of the natural results of the historic circumstances in the Colonies, has been that, Upper Chambers, being differently constituted are 'steadily Conservative' in tendency.<sup>1</sup>

But as the idea of creating a nobility with titles of honour accompanied by a seat in the Upper Chamber of legislature was discarded as early as 1791,<sup>2</sup> the only convenient device, bound to impart a conservative outlook to the Upper Chamber, was to base them on such a restricted franchise as to yield considerable representation to colonial aristocracy. The principle of historic continuity of the constitutions also pointed in the same direction. In India also, by the Act of 1909, the Government of India<sup>3</sup> hoped to create a constitution about which the conservative opinion would crystallise and offer substantial opposition to any further change. They anticipated that the aristocratic elements in Society...would range themselves on the side of the government and oppose any further shifting of the balance of power and any attempt to democratise Indian institutions."

In 1919, when the creation of a Second Chamber was proposed, it became inevitable for the government to depend upon

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1,2. A.B.Keith: Responsible Government in the Dominions, pp 102-103.

3. Report on Indian Constitutional Reform, (1918), p 38.



landed gentry, who were considered to be the ' natural and acknowledged leaders in country areas.'<sup>1</sup> Besides this, being conservative by nature and inclination, the Council of State required their services. The authors of the Joint Report, were, therefore, insistent upon giving them " a special measure of representation." But as it was difficult for the so-called aristocrats to face the same kind of electorate as was appropriate for the Lower Chamber, the restricted franchise for the Upper Chamber, in which they were to get special representation, was, therefore, a necessity.

Above all these considerations, the institution of an Assembly with a large elected majority confronted the Government with the problem of enabling the executive to secure their essential legislation and supplies.<sup>2</sup> The authors of the Joint Report, wanted to make the Council of State, both a revisionary Chamber and a Government organ of legislation,<sup>3</sup> and it was for the latter purpose<sup>4</sup> that an official majority was recommended. The Joint Select Committee, to which Government of India Bill of 1919 was referred rejected the proposal of making the Council

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1. Report on Indian Constitutional Reform (1918), p 72.

2 and

3. Report on Indian Constitutional Reform (1918), pp 131-132.

4. Ibid, pp 132-33.

an official organ of legislation.<sup>1</sup> The Committee wanted to see the Council of State as a real Second Chamber. Consequently the proposed official majority was replaced by a slight non-official one.

The Council of State was, therefore, composed of 60 members - a very convenient number where in every question could be thoroughly examined.

The number of elected members was 34, while the nominated block consisted at most 20 officials and 6 non-officials. The franchise was given to 17,644 persons in 1921; to 32,126<sup>2</sup> in 1926; to 4,513 in 1931. The natural result of this small franchise, based as it was on high property and income-tax qualifications, was that nearly half of the elective seats went to the landlords; one-third to commercial magnates and the remaining to the miscellaneous classes.<sup>3</sup>

One of the salient features of this small electorate was its firm political character, not subject to sudden changes of outlook that took place from time to time in the nationalist circles. This conservatism of voters which lurked in the first elections kept descending to the subsequent elections, which reflected to a very little extent

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1. Report from the Joint Select Committee on the Government of India Bill, 17th November, 1919, part II, p 9.

2,3. Memoranda submitted to the Indian Statutory Commission by the Government of India, p 36. See also Reforms File 133/31. Return showing the results of elections in India 1923-31. presented by the Secretary of State for India to Parliament, by Command of His Majesty, July, 1931.

the influence of national movements adopted in large numbers by voters of other legislative bodies on various occasions. Their political conservatism and reluctance to harmonise themselves with the other and wider classes of voters resulted in the pursuit by the Council of a consistent and stable policy as a House of Elders ought to do.

As the elective legislative Councils of the dominions have at least in law, co-ordinate powers in legislative matters, there seemed, therefore, no reason why the Indian Council of State should be deprived of that position. Even in financial matters the practice of the Imperial Parliament is supposed to be followed.<sup>2</sup> But in a sense these Upper Houses are inferior, not because of any direct statutory limits on their authority, but as Prof. Keith observes:

" Partly tradition and still more the lack of financial initiation have produced the result that the government of the day is controlled by the wishes of the Lower House and not of the Upper."<sup>3</sup>

The Government of India Act, 1919, did not place any special restriction on the powers of the Council except that it could not vote the Budget. The ordinary legislation as well as finance Bills were to be passed by both the

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1. A.B.Keith: Op.cit. pp ~~104~~ 104-106.

2. A.B.Keith: Op.cit., pp 104-106.

3. A.B.Keith: Op.cit, p 107.

Chambers. Much was, therefore, left to the sense of the Council and also to the whims of a government, which, by virtue of its position in the Council, exercised a substantial influence over its proceedings. The extent to which the Council was to imitate the position of the House of Lords, was left to the traditions to be developed by itself in collaboration with the Executive.

But the procedure regarding the certified legislation was a novelty of the Act of 1919. If the Assembly rejected a Bill, it could be sent to the Council of State on the recommendation of the Governor General, and if passed there, it could become an Act of the Legislature on receiving a certificate of the Governor General and without any further reference to the Assembly. The solid official bloc, though in minority, was always able to carry the House every time a recommended Bill appeared before the Council. It also won victories in defeating the private Bills which were sent up to the Council from the Legislative Assembly in the teeth of official opposition. And every time the Council favoured the official policies, in these regards, there was an uproar of adverse criticism in the country — mostly sentimental. The Congress circles particularly, have nicknamed the Council and its members as a Chamber of obscurantists and obstructionists.



The result of such emotional and one-sided criticism has been that the most valuable services of the Council of State as a Second Chamber have receded into the background. Its part in the revision of social legislation, its role in the economic development of the country, its contribution in the establishment of senatorial traditions, its moderate and discriminate exercise of privileges, the accumulated experience of its members in various walks of life and their long attachment with the parliamentary institutions, and its successful conciliatory efforts for compromises between the Government and the Lower House which were irresponsible to each other, are lost sight of by the nationalistic criticism.'

Conservatism in itself is a relative term. The Council of State in so far as it could be called conservative as compared with the Legislative Assembly was the true reflector of the Public Opinion, which was decidedly far more backward in thought and action, in social and economic affairs, than a handful of the leaders who generally guided the destinies of the Lower Chamber.

The study of the subject will reveal that the Council was conservative only so far as the political and constitutional advancement was concerned, provided gradualism may be conveniently termed as conservatism. The fact is that so far as the social reforms and the labour policies

are concerned, the Council was as progressive as the Assembly. Whenever measures aimed at far reaching social and economic changes, like the Sarda Act or the Payment of Wages Act were sent up to it by the Assembly, it practically never thwarted their passage, provided it was convinced that the demand for such measures was real and no substantial opposition to them existed in official and non-official circles. Proposals of social Reforms have always met in India with substantial opposition from the leaders of orthodox communities. The policy of the Council to delay such reform measures was in tune with the recommendations of the Bryce Conference according to which its duty as a Second Chamber was to interpose so much delay as to enable the mind of the nation to freely express itself. A comparative study of the working of the Second Chambers in the dominions and outside, allays the misgiving that our Council of State being an ultra-conservative body was unique in that regard.

The fact that the Council of State often supported the Government on recommended legislation, is not enough to prove that it was a pro-government body. There were occasions when the Legislative Assembly opposed official Bills not on their intrinsic value but on the general grounds of politics. Similarly it passed several private bills in a spirit of retaliation. Absolute justification



of these decisions of the Assembly is impossible as much as the absolute condemnation of the Council which reversed them. The Council of State being less open to political humdrums, generally judged those measures on their own merit, and naturally reached different and often antagonistic conclusions. In this thesis an attempt has been made to evaluate the decisions of the Councils on such controversial issues on the basis of their real value and not on political considerations only.

And even if these antagonistic decisions form a sufficient ground to prove the reactionary character of the Council of State, what about the numerous points of concord on financial, social, legal and various other measures on which the two Houses exhibited complete unanimity? The fact that both in quantity and quality the former type of decisions are outweighed by those of the latter type, must prove to the contrary. Indeed the large area of agreement on a huge number of measures is sufficient proof that the Council of State played the real role of a Second Chamber in a satisfactory manner.

Being in a better position to dispose off the legislative business more expeditiously than the Legislative Assembly, the Council of State used to get enough time to devote itself to the discussion of various economic, social and political problems through non-official resolutions.

Being by its very constitution in a better position to influence the official policies, its debates on such problems

were more fruitful to the Government and the nation alike than those of the Legislative Assembly where most of the speeches were animated by a sense of mutual jealousy and distrust.

At times when political temperature of the country ran too high, it was the Council of State which faithfully guarded the economic and political interests of the nation. Surprisingly enough this role of the Council has received no place in the annals of our national struggle.

No writer on Indian Constitutional development has taken pains to make a special and detailed study of the subject. The composition and working of the Council of State have generally been disposed off by them in a summary manner. For a special study of the subject, there was, therefore, no alternative but to explore the original sources - e.g. the proceedings of the Legislative Department; proceedings of the Reforms Informal Advisory Committee, Reforms Office files, including the Simla Records, the Debates of the Council of State and the Legislative Assembly and various reports of the Committees and conferences published from time to time by the Government of India or by His Majesty's Government. Pure journalistic opinions have been avoided as far as possible. It is mainly for these reasons that the official sources have been so often referred to in these pages.



It is in the light of facts that an academic approach has been made to properly and impartially analyse the contributions made by the Council of State in various aspects of our national life, without forgetting that it was primarily a Second Chamber.

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## CHAPTER I

### CONSTITUTIONAL BACKGROUND

British Policy  
before 1919

Every new step in the path of Constitutional Progress of India is connected with the old, like the links of a single chain spread over the entire period of British Rule. Thus in order to explain the genesis of bicameralism established by the Act of 1919 and its connection with the traditional British Policy, it is almost inevitable to review as precisely as possible the development of Legislative bodies in India. The earliest growth of the law making Power was embeded in Elizabeth's Charter granted to the Company on 31st. December, 1600. The Charter was to remain in force for 15 years and could either be renewed for the same period or could be terminated.<sup>1</sup> The only points of the Constitutional interest in the Charter were the constitution of the Company and its right to frame laws. The latter authorised the Company to enact laws and ordinances for the good Government of the Company and their staff. The authority of the Company was "modeled on the powers of making by-laws commonly exercised by ordinary Municipal and Commercial Corporations"<sup>2</sup> with the proviso that such enactments should not be repugnant to the English Law.<sup>3</sup> "No copies of any laws made under the

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1. Ilbert - The Government of India, p 5.

2. Ibid, p 9.

3. Joint Report, p 29.



early Charter are known to exist.<sup>1</sup> The Charter was renewed by James the First in 1609 and was made perpetual. It could be terminated only<sup>2</sup> after three years notice in proof of injury to the nation." The same Charter was again renewed and the powers sustained in the year 1669 which marked the "transition of the Company from a trading association to a territorial sovereign invested with powers of Civil and Military Government."<sup>3</sup>

After a brief interval, caused by the non-inclusion of Legislative powers in William III's charter, the Charter of 1726 granted by George I brought about a new trend of decentralisation by making the Governor in Council competent to make laws independently of each other within their separate jurisdiction. The Regulating Act of 1773 reversed the course started in 1726 and made the Governor General and the Council of Bengal supreme by requiring the Governments of the Presidencies to send to Bengal, the copies of their laws and orders, not for revision or approval but simply for information.

By 1813 when the powers of Presidencies were enlarged and subjected to greater control by the Home Authorities, a great confusion in the machinery and sources of legislation had developed and manifested itself in the system of Double Government. "In 1833", says Cowel, "the attention of Parliament was directed

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1. Ilbert, p 9 and Joint Report p 29.

2. Ilbert pp 13-14.

3. Ilbert - The Government of India, p 18.

to three leading vices in the process of Indian Government. The first was in the nature of laws and regulations; the second was in the ill defined authority and power from which these laws and regulations emanated and the third was in the anomalous and sometimes conflicting judicature by which the laws were administered.<sup>1</sup> Consequently the Charter Act 1833 was passed to simplify the legislative machinery and to correct the errors of the past. The tendency towards recentralization was again strengthened by drastically depriving the Governments of Madras and Bombay of their Legislative Authority and empowering them only to propose suggestions for the laws required, to the Governor General in Council. For this purpose Lord Macaulay was appointed as an additional member of the Governor General's Council and the Law Commissioners were appointed. Thus for the first time Legislation was recognised as a separate function which was distinct from the Executive Work of the Government. The change was significant because "in place of three laws making Executives, India thus acquired a Central though rudimentary legislature."<sup>2</sup> It was competent to make laws for the whole of British India.

But the scheme suffered from a serious set-back. It did not provide for the local knowledge in the Legislature while it was discussing the Legislative Problems of Madras and Bombay. As was suggested by Lord Dalhousie, the Act of 1853, beside

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1. Quoted by Ilbert - Government of India, p 84.

2. Joint Report, p 80.



conferring on the Law Member the status of full-fledged Executive Councillor, allayed the defect. It drew clear cut distinction between the Executive and Legislative business of the Council. While acting in its legislative capacity, the Council was to have 6 additional legislative members. Of these six, two were the judges of Supreme Court and 4 were the representatives of the Government's of Bengal, Madras, Agra and Bombay. The result was that Governor General's Legislative Council comprised 12<sup>1</sup> members under the Act, of 1855. The Act for the first time gave recognition to the Principle of Nomination of Local, though official representatives in the Central Legislature. The Bills were examined by Select Committees and the Legislative Business was conducted in Public. "We find legislation for the first time treated as a special function of Government requiring special machinery and special processes."<sup>2</sup> This was the position in the second decade of Legislative Development. Three years later the outbreak of Mutiny changed the entire outlook.

The one great defect of Lord Dalhousie's Reform which led to the horrors of Mutiny, was the complete exclusion of Indians from the Legislative Business of Government. The immediate effect of the Mutiny was the transfer of power from Company to the Crown. After the peace was restored, Sir Bartle Frere, in his minute wrote, "The addition of the native element has, I think, becomes necessary owing to our diminished opportunities

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1. Ilbert - Government of India, p 91.

2. Joint Report, p 81.

of learning through indirect channels what the natives think of our measures and how the native community will be affected by them... Of the fact there can be no doubt, and no one will, object to the only obvious means of regaining in part the advantages which we have lost, unless he is prepared for the perilous experiment of continuing to legislate for millions of people, with few means of knowing except by a rebellion whether the laws suit them or not.<sup>1</sup> He commended a scheme for a Council, "Very similar to the Durbar of a native prince...to which under a good ruler all have access, very considerable licence of speech is permitted and it is in fact the channel from which the ruler learns how his measures are likely to affect his subjects and make hear of discontent before it becomes disaffection."<sup>2</sup> In short he advocated benevolent despotism and not representative Government.

Consequently the Indian Councils Act of 1861 reformed the Governor General's Council with 12 additional members, for legislative purposes only. These additional members were to be nominated for a term of 2 years. It was also provided that one half of them should be non-officials. The Act did not expressly provide for Indians to be members, but by the use of the words non-official in the Act it virtually opened the gates for them to the membership of the Council. The value of this Council was

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1. Quoted in the Joint Report, p 31.

2. Quoted in the Joint Report, p 33.



best summed up by Lord Macdonall in 1881. He said, "the character of the Legislative Council established by the Act of 1861 is simply this, that they are Committees for the purpose of making laws - committees by means of which the Executive Government obtains advice and assistance in their Legislation, and the public derived the advantage of full publicity being ensured at every stage of the law making process. Although the Government enacts the laws through its Council, private legislation being unknown yet the public has a right to make itself heard, and the Executive is bound to defend its legislation. And when the laws are once made the Executive is as much bound by them as the Public, and the duty of enforcing them belongs to the courts of justice. In later years there has been a growing deference to the opinions of important classes, even when they conflict with the conclusion of Government and such conclusions are often modified to meet the wishes of the non-official members. Still it would not be wrong to describe the laws made in the Legislative Councils as in reality the order of Government but the laws are made in a manner which ensures publicity and discussion, are enforced by the courts and not by the Executive, cannot be changed but by the same deliberate and public process as that by which they are made, and can be enforced by the Executive or<sup>1</sup> in favour of individuals when occasion requires." As to their limitations he wrote, "the Councils are not deliberative bodies with respect to any subject but that of immediate legislation before them. They cannot enquire into grievances, call for

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1. Quoted in Joint Report, p 33.

information or examine the conduct of the Executive. The Acts of administration cannot be impugned, nor can they be properly defended in such assemblies, except with reference to the particular measures under discussion.<sup>1</sup> The Act expressly limited the powers of the Legislative Council to legislative functions only because its predecessors had shown signs of becoming a more or less Parliamentary institution. This was against the intentions of its authors. It attributed to itself the privileges of moving interpellations and discussing the propriety of Executive actions.

A few years later, the Act of 1870 extended the powers of the Governor General's Legislative Council by enabling it to make laws for all native Indian subjects in any part of the world. It restored to the Governor-General the power, taken from him in 1861, to legislate in a summary manner for the backward tracts of British India. It also empowered the Governor General to promulgate ordinances for the duration of 6 months in emergency cases.

But as the important sections of Indian opinion demanded further reforms in 1892 another Act was passed on the initiative of Lord Dufferin. This Reform Act extended the powers and rights of the Council. It supplied it with the representation of local bodies. The Principle of representation through indirect election was for the first time recognised and given effect to by this Act. But the principle of responsibility was still 4 remote and at the time even an unattainable ideal. One of the members

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1. Quoted in Joint Report, p 34.



of the Duffrin Committee wrote, "In my note of 19th January, 1888, written with reference to the request of the Chamber of Commerce and other Public Bodies that the Annual Imperial Budget should be submitted for discussion in the Legislative Council of the Governor General, I pointed out that the proposal involved very much wider issues, and was in reality only the first step towards giving the legislature the power of interpollation in Executive affairs and of criticising and controlling the Executive Government in every department of the administration: a power which parliament had deliberately withheld when the Indian Council Act was framed. The true use of the Councils in my opinion, is as consultative bodies to help Government with advice and suggestion."<sup>1</sup> He, however, recommended that, "it is with a view to this rather than to interpollation or debate and criticism that their machinery should be organised."<sup>2</sup>

It was again in 1888 that for the first time in the Constitutional History of India, emphasis was laid and action taken for "bringing the gentry and nobility of the country" into public affairs, "to give a still wider share in the administration of Public Affairs to such Indian gentlemen as by their influence, their acquirements, and the confidence they inspire in their fellow countrymen are marked out as fitted to assist with their Counsels the responsible rulers of the country."<sup>3</sup>

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1 and 2. Quoted in Joint Report, p 34.

3. Lord Duffrin quoted in Joint Report, p 34.

This process of remodeling was used not to train the Indians in the art of self-government but for associating the landed gentry and the selected few with a view to place themselves (Government)" in contact with a large surface of Indian opinion and thus to multiply the sources through which the wishes and wants of the ruled could be more authoritatively ascertained.<sup>1</sup> It was this gentry which later came to occupy the majority of seats of the revising Chamber. The principle of election was not clearly accepted, but earlier Lord Dufferin and later Lansdown's ( to adopt it in some form or the other, where conditions justified) were responsible for including in the Act, the so-called "Kimberley-clause" empowering the Governor-General with the sanction of Secretary of State in Council to make regulations defining the mode of nomination. It was, therefore, virtually left to the Viceroy, as Lord Curzon said, "to invite representative bodies in India to elect or select or delegate representatives of themselves and their opinion to be nominated to those Houses."<sup>2</sup> As to the form of electorate Mr. Gladstone had hinted "with the greatest amount of expectation and hope to Municipal Bodies and the local authorities<sup>3</sup> in India, in which the elective element is already included." The regulations were framed accordingly and the system of election "disguised as recommendation" was adopted for Governor General's Legislative Council. Out of 16 seats for additional

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1. Joint Report, p 34.

2. Lord Curzon quoted in the Joint Report, p 36.

3. Quoted in the Joint Report, p 36.



members 10 were given to the non-official members of the Provincial Councils, and one to the Chamber of Commerce of Calcutta. The remaining 5 were directly filled by the Governor General's nominees.

Following the recommendations of the Duffrin Committee, the Council was given a limited power of asking questions and discussing the Budget. It is to be remembered that the majority of Government in the Legislature was composed of officials and nominated non-officials. The elections were indirect and the idea of giving representation to the gentry through direct elections had been abandoned.

The Council functioned successfully for 14 years. The unofficial criticism of Government within the Legislature was mostly temperate; their suggestion and information were useful. But the benefits were not only one sided. The association of liberal leaders as representatives of landed and commercial classes, in the management of official policy though in a rudimentary form, opened new vistas of Political Education for Indians of high birth.

Lord Curzon, the uncrowned monarch of India had resigned and his place taken by the liberal minded Lord Minto in 1905. Non-official claims from within the Councils and Congress demands from without were instrumental for the appointment of a Committee - like that of Lord Duffrin's - to consider the increase of representative element in the Indian Central and Provincial Legislatures - a logical and most natural outcome of the past steps.

The problem before the Minto Committee was not that of blending the autocracy with democracy. Their task was simply to give more representation to local opinion and thus to create a "Constitutional autocracy", as the Montford Report called it. They wanted to create a system which could bar once for all the flood gates of democracy, opposition and further constitutional change. They gave the country a constitution round which the conservative elements of society could be rallied to oppose any further advance. They found such elements in the Aristocratic Classes of Society who could check "any attempt to democratise Indian Institutions."<sup>1</sup> They were not content to give a majority to such elements in the Council. Lord Morley endorsed the view of Minto Government when he wrote, "Indian gentlemen of position ordinarily refuse to offer themselves as candidates to a wide electorate, partly because they dislike canvassing and partly by reason of their reluctance to risk the indignity of being defeated by a rival candidate of inferior social status. While repudiating the intention or desire to attempt the transplantation of any European form of representative institution to the Indian soil; what is sought by your Excellency in Council is to improve existing machinery, or to find new for recognising the natural aspirations of Educated men to share in the Government of their country. I need not say that in this design<sup>2</sup> you have the cordial concurrence of His Majesty's Government."

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1. Joint Report, p 38.

2. Ibid.



It is not possible to avoid giving a brief description of the Reforms of 1909. According to the aims of their authors just explained, the only solution of the problem of blending autocracy with representation was to divide the representation into classes and interests. Thus in spite of embodying the principle of election in the constitution, the position of elective element was weakened. The Act gave representation to Presidency Corporations, Universities, Chambers of Commerce and the Planters. The Indian Legislative Council was enlarged upto 60 members, out of whom not more than 28 were officials, 5 Governor General's non-official nominees to represent certain specified communities and interests. The 27 elective seats were filled in by certain special constituencies such as the land owners in 7 provinces, the Mohammadans in 5, Mohammadan Land owners in one, and the Chamber of Commerce in the 2 Provinces. The remaining members were elected by the non-official members of the Provincial Legislatures.

However, on the Imperial Legislative Council an official majority (though narrower than before) was retained as Lord Morley had laid down that the Executive "in its Legislative as well as its Executive Character should continue to be so constituted as to ensure its constant and uninterrupted power to fulfil the constitutional obligations that it owes and must always<sup>1</sup> owe to His Majesty's Government and to the Imperial Parliament." Alongside with the changes in its constitution the Act enlarged its functions also. Previously the Budget could be discussed,

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1. Joint Report, p 39.

but now the Council was empowered to move resolutions upon it and to divide upon these resolutions. Further, resolutions could also be proposed on any matter of public importance. The right to ask questions was extended by allowing the member who asked the original question to put a supplementary one. But the Governor General as President of Council could disallow any question or resolution.

Within less than 10 years the Reforms introduced by the Act of 1909 lost their force and failed to meet the political aspirations of India. Not only they failed to encourage in members a sense of responsibility to the people generally, but made it impossible except in special circumstances for those who had votes to exercise them with perception and effect. Moreover, the responsibility for the administration remained undivided with the result that while Government found itself far more exposed to questions and criticism than hitherto, question and criticism were <sup>un</sup>informed by a real sense of responsibility such as comes from the respect of having to assume office in turn.<sup>1</sup>

Further, the Reform had no capacity to develop themselves and the only remedy left was to make the Government amenable or at least responsive to a more representative legislature. But whatever be the disclaimers of Lord Morley we are bound to say, "that the features of his Reforms which we have described do constitute a decided step forward on a road leading at no distant

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1. Ibid, p 40.



period to a stage at which the question of representative Govern-  
ment was bound to present itself.<sup>1</sup> The Act of 1909 was the  
final outcome of the era of 'benevolent despotism' whose charac-  
teristics are summed up by Gladstone in the following words:-

"Here is tutelage unexampled in History. It embraces from one fifth to one sixth of the human race: the latest German reckonings of the population of the Globe carrying it beyond Fourteen Hundred Millions. Over this population and the vast territory it inhabits, we hold a dominion entirely uncontrolled, save by duty and by prudence, measured as we may chose to measure them. This dominion is de jure, in the hands of a nation whose members as compared with those of its Indian Subjects are one to 7, and whose seat is at the other end of the world; de facto it is wielded by a handful of its agents, Military and Civil who are not at one to three thousand of the people's spreading as an ocean, in passive obedience around them...One of the Seventy thousand Anglo-Indians, not one except waives and strays strike roots in the country and all but a handful have their stay limited to a very brief term of years...At home still less provision is made for the adequate discharge of a gigantic duty. It depends upon a Cabinet which dreads nothing so much as the mention of an Indian question at its meetings; on a Minister who knows that the less they hear of his proceedings, the better they will be pleased. On a Council, which is not allowed to enter into his highest deliberations; and on a Parliament Supreme over them all, which cannot in its two Houses Jointly muster one single score of persons, who have either a practical experience in the Government of India or a tolerable knowledge of the people or its History.... The truth as to India cannot too soon be understood. There are two policies fundamentally different; and it is the wrong one that is now in favour. One of them treats India as a Child treats a doll, and defends it against other children; the other places all its hopes for the permanence of our Indian Rule in our Good Government of India. Sound Finance and moderate establishments, liberal extension of native privileges, and not least of all, an unfailing regard to the sacredness in pledge implied in privileges already given, these acts of Government will secure the way to prosperity, to contentment, and to confidence in India.

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1. Joint Report, p 40.

Let us only make common cause with her people: let them feel that we are there to give more than we receive; that their interest are not traversed and frustrated by selfish aims of ours; that, if we are defending ourselves upon the line of Hindoo-kush, it is then and their interest that we are defending even more and far more than our own. Unless we can produce this conviction in the mind of India, in vain shall lavish our thoughts and our resources upon a merely material defence - between the two methods of procedure there could be no competition, were we as people free to give to the affairs of India any thing like the attention which they demand, and which it may some day cost us many a fruitless pang never to have given."2.

The practice of associating the Indians in the Legislative Councils and the Executives of Provincial and Central Governments was based on the principle of fortifying the strength of official policy by creating the feelings of public confidence in Government. But the Political feelings in India were roused to such an extent that made the fundamental change in the Policy unavoidable. The development of the National Movement had its repercussions on the constitutional policy at various stages of progress and particularly on the constitutional changes brought about by the Act of 1919.

All the factors responsible for the genesis and growth of the Indian National Congress are so interlocated with each other that it is hard to give any one a priority over the other. Western Education and the English language have been primarily responsible for the political awakening of the country. "The<sup>2</sup> new wine of western learning --- went to the heads of young."

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1. Quoted by V.P.Menon 'Transfer of Power', p 2.

2. Lord Ronaldshay - The Heart of Arya Vartas, p 45.



Through its lessons in Political Science it taught Indians the "advantages of liberty"<sup>1</sup>, and created a problem for the Rulers as to how they "are to keep them under" control and "persuade them that it is for their good that" they hold all the "high offices of Government"<sup>2</sup>. Macauley longed for the day in English History when Indians equipped with European knowledge "demand European Institution"<sup>3</sup>.

The Economic Exploitation and the exclusion of Indians from high offices of Government added fuel to the fire. The official policy with regard to the entry of Indians to those services as Mr. Ramsay Macdonald narrated was "to chose between prohibiting them and cheating them,.... The application to natives of the competitive examination system as conducted in England and the recent reduction in age at which candidates can compete, are so many deliberate and transparent subterfuges for stultifying the Act and reducing it to a dead letter."<sup>4</sup> It is not without significance that the first agitation in India was in connection with the Indian Civil Service though "the underlying conception and the true aim and purpose, of the Civil Service agitation was the awakening of a spirit of Unity and solidarity among the people of India."<sup>5</sup>

The increasing number of Newspapers most of which were critics of bureaucracy facilitated the formation of a sense of political unity.<sup>6</sup> The facilities of transport provided by the Britishers were remarkable in their contribution to the national

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1,2. Quoted by Sir Varney Lovett - A History of Indian National Congress, p 21.

3. A.B.Keith - Speeches and Documents on Indian Policy, Vol.I, p 265.

4. Quoted by C.L.Anand - History of Government of India, Pt.II, p 255

5. Sir S.N.Banerjee - A Nation in Making, p 44.

6. For a detailed list of papers see Indian Year Books 1909-1919,

## INTRODUCTION

Twentieth century has so rapidly seen the rise and fall of Second Chambers all over the world that it has become almost impossible to justify or condemn altogether the bi-cameral system on merely theoretical grounds. Even during the earlier part of the present century the process of decay and growth of the system was in full swing. On the one hand several Balkan states and Turkey totally discarded the Upper Chambers because of their irreconcilability<sup>1</sup> with the popular franchise, while in Western Europe, where bi-cameralism had taken deep roots, there is found widespread discontentment with the Senatorial Houses.<sup>2</sup> It is rather significant to note that the Polish Constitution of 1921 and those of Germany, Italy, Austria, the two Eirelands,<sup>3</sup> Iraq Syria, Egypt and Iran<sup>4</sup> adopted the system of two houses of Legislature.

Bi-cameralism has been justified by political thinkers and eminent jurists on various grounds. To them, "A Single body of men is always in danger of adopting hasty and one

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1. A.H.Morley: The New Democratic Constitutions of Europe, (1929), p 415, See also M.W.Graham: New Governments of Eastern Europe, pp 212,381,297, 341.
  2. Robert C.Brooks: Government and Politics of Switzerland, p 90, See also Joseph Bartheleony:.....and A.B.Keith: Constitution of England from Queen Victoria to George VI.
  3. A.H.Morley: The New Democratic Constitutions of Europe.
  4. R.C.Ghosh: Constitutional Development in the Islamic World.



sided views, of accepting facts upon insufficient tests, of being satisfied with incomplete generalisations, and of mistaking happy phrases for sound principles." Two Chambers, they conclude, will secure the golden mean between progress and conservatism.

But the fact remains that no such ideas can be held responsible for the origin of the system. Prof. Morgan points out that a legislature is now controlled by the cabinet and does not imperatively require a check from another chamber. A Second Chamber, therefore, means either a weak or a subservient body. Prof. Hearn stated that if there be two representative chambers, and if one is formed on a sound principle, the second so far as it differs from the first, must deviate from these principles.

The wise course, therefore, is that if the democratic principle is only partly admitted, (as was the case in India in 1919) and imperfectly applied, it is but expedient to have a second chamber based on higher and narrower franchise, but once the principle is recognised in full, it really passes the wit of man to devise a satisfactory constitution for it.

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1. Burgess: Political Science and Constitutional Law, Vol. II, pp 106-107.
  2. Sydney Low: The Governance of England - Introduction - p XIV.
  3. Morgan: Place of a Second Chamber in the Constitution, pp 9-10; 14-15.
  4. Hearn: Government of England, p 543.

Traditional  
British  
Policy.

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While in Great Britain, the bi-  
cameral pattern was one of the

children of accident, it was not necessarily so in the  
Dominions; It was rather believed that successful consti-  
tution can only be based on the model of that in force in  
England. As early as 1791 the possibility of attaching  
the titles of honour to the tenure of seats in the Upper  
house was seriously contemplated.<sup>1</sup> In 1893 the Secretary  
of State for Colonies deemed it gravely doubtful " to  
attempt to set up a legislature on other than traditional  
basis."<sup>2</sup> The Policy has been so consistently pursued that  
nearly every Commonwealth country to day has a bi-cameral  
legislature.

Its appli-  
cation  
in India

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In the Secretary of States announcement  
of August 20, 1917, the clearly set

ideal for India was the achievement of dominion Status  
through stages. It was understood that by the time the  
status is achieved, democratic institutions should be  
established on the pattern of those prevalent in the self-  
governing dominions. The germs of bi-cameralism were,

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1. A.B.Keith: Responsible Government in the Dominions, p 102.

2. A.B.Keith: Responsible Government in the Dominions, p 103.



movement. By the historic Delhi Durbar the Indians were compelled to think automatically that, "if the Princes and nobles in the land could be forced to form a pageant for the glorification of an autocratic Viceroy, why could not the people be gathered together to unite themselves to restrain by constitutional means and methods, the spirit of autocratic rule."<sup>1</sup>

The bitter racial feelings generated by the Mutiny and the resultant policy of separation and prejudice against the Indians contributed a lot towards the National Feelings among Indians. "It is the grave system," wrote Sir Henry Cotton, "that the official body in India has now succumbed as completely as the non-official to anti-native prejudices....It is a grave position to which we have drifted, for the change is complete and the tension acute."<sup>2</sup>

Hindu and Muslim religious revivalists were also responsible to a great extent in creating a sort of hatred against the foreign rule. But not the least was the desire on the part of some retired Civil Servicemen to save the British Raj from revolutionary upheavals which were occurring here and there by providing 'safety valve' for the smooth outlet of these grievances.<sup>2</sup>

As a result of these factors the Indian National Congress was first held in 1885 in Bombay, at the same time when the Indian Association was holding its session at Calcutta. The

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1. A.C.Mazumdar - Indian National Evolution, p 33.

2. Sir Henry Cotton - New India, p 51.

3. Lajpat Rai - Young India, pp 135-138.

former may be termed as a "movement not from within" as in the words of Lajapat Rai, it "was started by an English man at the suggestion of an English Proconsul."<sup>1</sup> But the later years saw the fusion of the two separate organizations into one, making the Indian National Congress the mouthpiece of Educated India. It was, however, an organization dominated by loyalists, liberal minded, and Educated Indians under the influence of Hume and Henry. It was to serve the Government as a subsidiary advisory council to suggest and help the Government through un-official channels in the maintenance of law and order. Expressing their discontentment with the Act of 1861 in the very first session it asked for "The reform and expansion of the supreme and the existing local legislative councils by the admission of a considerable number of elected members, the creation of similar councils in North West Frontier Province and Oudh and also in the Punjab and for giving the right of Interpellation and a discussion of the Budget to these Councils, about which Lord Dufferin wrote, "it now appears to my colleagues and myself that the time has come for us to take another step in the development of the same liberal policy and to give still wider share in the administration of public affairs, to such Indian gentlemen as by their influence, their acquirements, and the confidence they inspire in their fellow countrymen are marked out as fitted to assist with their counsels, the responsible rulers of the country."<sup>2</sup>

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1. Ibid.

2. Quoted by Annie Beasant - How India wrought for Freedom, p 13.



The Indian Council's Act of 1892 was passed to meet these demands to a limited extent. The Act provided for the association of educated class with the business of Government - the class which was demanding the so-called radical reforms at the time. It included the 'nobility and gentry' of the country in the higher deliberative organs of Government.

The later history of the movement is full of conflicts arising from within. The chief factor was the emergence of religious which caused frictions in the Congress Camp and ultimately resulted in the Surat split. The same factor gave rise to Muslim communalism and the formation of Muslim League in 1906.

The Congress was dissatisfied with the reforms of 1892 and particularly with the electoral rules framed thereunder. At its session of 1893 a protest was recorded on four points. (i) The round about system of election. (ii) The refusal to the Councils of the right to ask supplementary questions and of the right of voting on the Budget. (iii) The denial to Punjab of representation in the Central Legislature and (iv) The ill considered nature of electoral rules. Mr. Gokhale while seconding the resolution on the last item observed, "in regard to these rules I will not say that they have been deliberately so framed as to defeat the object of the Act of 1892, but I will say this, that if the officer who drafted them had been asked to sit down with the deliberate purpose of framing a scheme to defeat that object, he could not have done better." <sup>1</sup> The greatest defect of the

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1. Ibid, p 166.

rules was to give unnecessary weightage to the British Mercantile class and Indian landed aristocracy in the Councils at the expense of Indian Commercial and middle-class intellectuals. But as the Congress was still in the hands of the moderates the ideal of Self Government and its achievement through gradual and successive stages by constitutional means was the hallmark of Congress Nationalism. Throughout the period of 1892-1907 the Congress concerned itself with "the Reforms and expansion of the Legislative Councils, the separation of Judicial and Executive Functions simultaneous examination for the I.C.S. in India and England,<sup>1</sup> the reduction of Military expenditure" and so on.

The failure of the Congress to influence the Policies of Government, the unpopular legislation of Curzonian Regime (such as the Calcutta Corporation Act of 1899, Indian Universities Act 1904, and the Official Secrets Act of 1904) and above all the partition of Bengal led to the creation of the new attitude of mind and even of a new party of 'extremists' within the Congress. It gained its first Victories at the Benaras session of 1905, on the boycott resolution and by holding an open conference in the Congress Camp in which Tilak advocated the programme of passive resistance and national reconstruction, which was later adopted by the Congress. Dadabhoi Nauroji was called from England to preside over the Calcutta Session by the moderates who were unwilling to let Tilak take the presidential chair. Meanwhile Mr. G.S. Khaparde (later a member of Council of State) addressed a letter to all prominent Congressmen calling for a radical change

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1. A.C. Mazumdar - Indian National Evolution, p 93.



in the Congress Programme. "From the date of this letter may be dated the origin of the British Policy of allying the Moderates - since then the Anglo Indian Papers changed their attitude towards the old Congressmen and began to pat them on the back and to warn them against the tactics of the Extremists."<sup>1</sup>

However, it was in 1906 that Dadabhoi Nauroji for the first time from the Congress pulpit proclaimed the ideal of Swaraj for the people of India. The 'Englishman' exclaimed that the man who was "called upon to quench the flames of hatred towards the British Rule in India, had only used Kerosine oil for that purpose."<sup>2</sup> But even the diplomatic announcement of Swaraj by the Grand Old-man of India failed to keep the new and the old schools of Political thought in Unison and the Surat Split of 1907 occurred as expected.

The next two years in which the Reforms of 1909 were ushered, were the years of great Political unrest in which the Extremists played a most prominent role. Despite the difference in their methods, the political goal of both the Extremists and the Moderates was the attainment of Swaraj. In answer the Government embarked upon the dual policy of conciliation and Repression, the former for the Moderates and the latter for the Extremists. At his last interview with Mr. Gokhale Mr. Morley told him, "for reasonable reforms in your direction, there is now, an exampled

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1. G.M.Singh - Landmarks in Indian Constitutional Development, p 296.

2. Quoted by Mrs. Beasant - How India wrought for Freedom, p 445.

Chance...We are quite in earnest in our resolution to make an effective move.<sup>1</sup> But, "if your speakers or your newspapers set to work to belittle what we do, to claim for the impossible, then all would go wrong",<sup>2</sup> and what Mr. Gokhale did, was that<sup>3</sup> "he sent a most friendly and hopeful note" to his friends. On the other hand the Government of India was busy in evolving proposals for reforms in such a way as to ensure the support of the moderates, the Mohammadans and the Landlords. These were embodied in a despatch of First October sent to the Secretary of States. The difficulty of the task set out by the Government of India for themselves was realised by Morley in his despatch of November 5, 1908. "This subject is grave to keep in step with you is all important; to present a front that won't offend the Bureaucracy; nor the non-official Anglo Indians, nor the Mohammadans, nor the right wing of the Congressmen is no joke...."<sup>4</sup> and the result was that the Indian National Congress gave a hearty welcome to the Minto Morley Scheme - a Congress which was shorn of its left wing. But the regulations framed by the Government of India to give effect to those reforms were equally denounced by both wings. Speaking on a resolution condemning the said regulations a moderate leader at the Congress Session of 1909 observed, "It is no exaggeration to say that the rules and regulations have practically wrecked the Reform Scheme...The responsibility

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1,2,3. Morley - Recollections, Vol. II, pp 181-182.

4. Ibid, p 281.



rests on the shoulders of bureaucracy."<sup>1</sup> The regulations were so framed as to enfranchise as many land lords as possible and to neglect the intellectuals and the middle class in the process of assuming the shape of a permanent opposition to Government. An official wrote, "I do not think it desirable to create constituencies made of artificial electorates with no common tie but that of creed and occupation, corresponding to no local area and belonging to no organised association already in existence. It would in my judgement be better...not to anticipate that lawyers and school masters will oust the landowning classes...If any class are found not to be adequately represented among the elected members, the deficiency can be made good by nomination."<sup>2</sup> Mr. V.H. Story wrote, "they are tainted all over with a degrading appeal to class interests and always Upper Class interests."<sup>3</sup> The Government of India was conscious of the fact that Middle Class intellectuals will be a restless element. Government of India is turning towards the landowners for support."<sup>4</sup> Anglo Indian daily "Statesman" wrote, "the more carefully the Council Reforms mooted by the Government of India are considered, the more apparent does it become that the scheme amounts to little else than provisions for including more landowners and more Mohammadians."<sup>5</sup>

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1. Quoted by Annie Beasant - How India wrought for freedom, p 495.

2. Chief Commissioner of C.P. quoted in 'Hindustan Review' April 1909, p 444.

3. Hindustan Review, September 1907, p 272.

4. Hindustan Review, September 1907, p 272.

5. Ibid, p 282.



The Hindustan Review concluded, "We have come deliberately to the conclusion that the lot of educated Indians, if and when the scheme takes effect will be much worse than even at present, and the best that we can wish for it is that it will be hurried un-<sup>1</sup>wept, unhonoured and unsung."

Thus the main change brought about in the constitutional policy by the Act 1909 was the separate electorate for Mohammadans and its emphasis on the increased representation of Zamindars as a counter poise to the newly emerging middle class by providing narrow Franchises. Out of a total of 27 elected seats 6 special seats were reserved for the Zamindars and they were also frequently found upon Mohammadan Seats. The percentage of lawyers in the Central Legislature in 1909, 1912 and 1916 was 37,<sup>2</sup> 26 and 33 respectively and it was decidedly far lesser than their co-professionals in the British House of Commons, in the French House of Representatives or the American Congress. But even this small number of men of law was feared by the Government of India who wrote, "...so great a political predominance of men of one<sup>3</sup> calling is clearly not in the interest of general community..." The idea working behind this criticism was that "after all the lawyer or School Master sits not as the spokesman of his professional interests, but because his education, his quickness of wit, his power of speech have obtained for him the suffrages of the small<sup>4</sup> farmers and peasants cultivators" of whom the Government of India was afraid. However, the Reforms of 1909, by

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1. Hindustan Review September 1907, 282.

2. Ibid, pp 273-274.

3. Joint Report. p 44.

giving substantial representation to Mohammadans and Zamindars laid the foundations of bringing the communalism and aristocracy into the practical Politics and to use their weight in their own favour and also as a dead weight against the progressive forces, which were demanding extensions of the Franchise on still broader bases.

This device of bringing the Zamindars and Muslim communalists into Legislatures could neither satisfy the Indias Political aspirations nor Bureaucratic hunger for dominance. To quote from the Joint Report, "narrow Franchises and Indirect elections failed to encourage in members a sense of responsibility to the people generally, and made it impossible, except in special circumstances, for those who had votes to use them with perception and effect. Moreover, the responsibility for the administration remained undivided with the result that while Government found themselves far more exposed to questions and criticism than hitherto; questions and criticism were uninformed by a real sense of responsibility such as comes from the prospect of having to assume office in turn. We have at present in India neither the best of the old system nor the best of the new."<sup>1</sup>

Events moved fast. Internal commotion and external conflicts simply helped to announce new policies and to enact new

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1. Joint Report, p 41.



statutes. But the experience of the Indian/ and Provincial Legislative Councils as will be shown later, gained through the working of the Act of 1909 was utilized in the framing of the Government of India Act of 1919. Before going into the details of the latter, it is necessary to review very briefly the important events that occurred between 1909 and 1919 and their influence on the constitutional policy and its culmination in the said Act.

Political events during the years (1909-1919) are very ably summed up by Gurmukh Nihal Singh. "It is the shortest epoch in the history of British India; but its importance is not to be measured by the number of years that bridge its span. It is replete with events of tremendous significance. For the first time a British Sovereign - with his Imperial Consort and one of the Imperial Secretaries of State - set foot on the soil of India; for the first time an Indian was appointed Under Secretary of State for India; and for the first time the goal of British Policy in India was defined to be the establishment of responsible political institutions and the vision of Federal India with autonomous, Self Governing Units appeared on the horizon. It was during this period that the hated partition of Bengal was modified in consonance with the national aspiration and the wishes of the people; the capital of India was transferred from Calcutta to Delhi and the decision to build a new Imperial City there was taken; and the reunion of political parties - the Moderates, the Extremists and the Muslim League -

was affected and an agreed scheme of political progress was evolved by the spokesman of the nation. It was again in this decade that the biggest conspiracy to overthrow British rule was hatched after the mutiny; a huge organised agitation to achieve Home Rule and to prevent the enforcement of 'lawless' laws was conducted; the ghastly tragedy of Jallianwala Bagh was perpetrated by a British general in the religious metropolis of the Sikhs; and repression on an unprecedented scale - through repressive legislation and the administration of Martial Law in the Punjab was practised. The Great World War was not without the effects on India and it entailed on the Country a tremendous sacrifice of both men and money...enhanced several fold by the terrible influenza epidemic which in the course of a few weeks swept away several million people - estimated variously from six to ten millions. And there was besides a number of events and changes of smaller or greater constitutional importance - like the development of a policy of decentralisation - and the enactment of the Indian High Courts Act, 1911, the Government of India Act 1912, the appointment and report of the Public Service Commission, the visit of Mr. Montague and other members of the British delegation, the publication of the report on Constitutional Reforms in 1918, and the passing of the Government of India Acts of 1915, 1916 and 1919...that were witnessed in India during 1908-1919."

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1. G.N.Singh - Land Marks in Indian Constitution and National Development, pp 433-434.



The last three years before Mr. Montague's visit to India were full of the most considerable constitutional activities. In India herself, Mr. Gokhale's Scheme, Ninteen Memoranda and Congress - League Scheme, all aiming at either progressive modifications of the British Constitutional Policy or a demanding a radical departure from the Statuo quo were put forward during the period. In Great Britain, persons interested in Colonial and particularly Indian affairs formed a Round Table Group. Sir William Duke's Memoranda and Sir Lional Curtis proposals were the most significant outputs of their labours.

The Reforms of 1909, beside their inherent insufficiency to satisfy India's Political aspirations, had become, through the passage of time, too out moded. They were subjected to scathing criticism by officials and non-officials alike. National awakening gained momentum by the application of ruthless measures, the spread of revolutionary activities, Home Rule movement and the formation of Home Rule Leagues. Muslims were enraged by the imposition of the humiliating terms of the Treaty of Sevresses upon Turkey already defeated and ruined by the Allied Conquerors. The Sikhs alienated their sympathies from the Raj because of the degrading treatment meted out to their brethren in Ghadar Party. The Government of India Act of 1909 was modified by the successive Acts of 1912, 1915 and 1916 but even then it provided no room for the solution of new problems that had arisen during those years. Indian demand of attaining Dominion Status was recognised

in external affairs through the appointment of Viceroy's nominees of Indian nationality and through giving India separate representation at the Peace Conference. But these were meagre concessions as compared to the then gigantic demand for Self Government, which was being repeated year after year from Press and Pulpit since Dadabhoi's historic Presidential address of 1906. "On all sides it was felt that the situation demanded new handling... Lord Chelmsford's Government felt that without the declaration of Policy for which they were pressing, it was impossible for them to act effectively on a directed course," and the required declaration came from the Secretary of State for India on 20th August, 1917 which read:

"The Policy of His Majesty's Government with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of Self-Governing Institutions with a view to the progressive realisation of responsible Government in India as an integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible, and that it is of highest importance as a preliminary to considering what these steps should be that there should be a free and informal exchange between those in authority at home and in India. His Majesty's Government have accordingly decided with His Majesty's approval, that I should accept the Viceroy's invitation to proceed to India to discuss these matters with the Viceroy the views of local



Governments and to recieve with him the suggestions of representative bodies and others.<sup>1</sup> Adding a note of caution the announcement went on "that progress in this Policy can only be achieved by successive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian people, must be judges of the time and measure of each advance, and they must be guided by the Cooperation received from those upon whom new oppertunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility."<sup>2</sup> The announcement marked the end of one epoch and begining of a new one.

In Indian the announcement created a cleavage in the nationalist ranks of the country. The Extremists headed by Tilak and Mrs. Beasant regarded it unsatisfactory both in language and substance and continued their agitation for the release of Home Rule prisoners. Moderates on the other hand welcomed it as "the Magna Carta" of India. They concentrated their energies on an educative campaign, thereby preparing the country for receiving Mr. Montague. He arrived loaded with the historic announcement with the appended caution, on November 10, 1917 and started his investigations accompanied by his party and the Viceroy. He began to interview the deputations from the Political associations,

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1. Joint Report, p 1.

2. Ibid.

organised interests and the Princes, but did not put forth his own proposals and let the whole thing come from the Government of India which was timid and could only move under the utmost pressure exerted by him. The Scheme was therefore, primarily the work of the Government of India because four days before the Report was signed, the Viceroy told the Secretary of State that both the Report and the Scheme were his and that the reforms would always, be known as the Montague. Chelmsford Reforms, but that it being in India he felt he must sign first.<sup>1</sup> To this Mr. Montague pointed out the Constitutional difficulties and suggested that the two signatures should be put side by side in the same line.<sup>2</sup>

Before examining the relevant portions of the report it seems inevitable to point out the main effects that Mr. Montague's visit produced in the Indian Political life.

Like his successor's mission of 1942, he could claim and did actually claim, "I have kept India quiet for six months at a critical period of war; I have set the Politicians thinking of nothing else but my mission."<sup>3</sup> This was the immediate effect but still there was another far greater one in importance. He believed that it was indispensable to find a nucleus of people who will support us...otherwise I do not see how can I assure the Cabinet that our Scheme will be worked by any section in India."<sup>4</sup>

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1,2. Montague - An Indian Diary, p 360.

3. Montague - An Indian Diary, p 288.

4. Ibid, p 134.



For this purpose he hinted on "a new organization of Indians to be collected, assisted in every possible way by the Government for propaganda on behalf of us. He accordingly talked about the formation of a moderate party - The newly formed group very enthusiastic and talked about editing news papers and carrying on vigorous propaganda. They meant business!"<sup>1</sup> The result was that within a few months, rather than years the Moderate Party emerged with a separate organization and Provincial and All India Conferences. It is significant to note that in the first legislatures whose elections were boycotted by the Congress and from which the Muslim League abstained, it was this party which dominated the Central Legislative Assembly and the Council of State, continued there for three and five years respectively and influenced to a very large extent the proceedings of the Central Legislature. The comparative harmony that prevailed between the two Chambers, at least during the life of the First Assembly, may be attributed to this fact. The Montague Mission was, however, successfully in breaking, to a very large extent, the solidarity of the National Movement for a long time. He struck a death dealing blow to the Tripartite Union which had culminated in the Moderate - Extremist entente of 1916 and the Congress-League scheme for Political Reform.

The joint authors, before disclosing the actual proposals laid down four vital principles upon which they based the entire super structure of their Reforms Scheme. The first two principles concerned with the advancement in the Provincial Sphere and

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1. Montague: An Indian Diary, p 104.

included mainly the enlargement of elective seats and the introduction of dyarchy. The next two principles enunciated the modification in the structure of the Central Government. They were (1) "The Government of India must remain wholly responsible to the parliament and saving such responsibility its authority in essential matters must remain indisputable, pending experience of the effect of the changes now to be introduced in the Provinces. In the meantime legislative Council should be enlarged and made more representative and its opportunities of influencing Government increased." (2) In proportion as the Foregoing Changes take effect the Control of Parliament and the Secretary of State over the Government of India and Provincial Governments must be relaxed. Thus relaxation of Control and the enlargement of the Legislative Council by making it more representative and to exercise greater influence on the Government were the only two basic changes proposed in the Central Government.

Lord Morley as early as 1909 laid it down that the Governor General's Council "in its legislative as well as its Executive Character should continue to be so constituted as to ensure its constant and uninterrupted powers to fulfill the constitutional obligations that it owes and must always owe to His Majesty's Government and to the Imperial Parliament." The authors of the joint Report were not prepared to relinquish the responsibility of the Governor General to the Imperial Parliament either in the

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1. Montague - An Indian Diary, p 39.



Legislative or Executive sphere. They like Lord Morley believed that while "they could advance further in the Provincial sphere, but that for the Present Official authority must be effectively maintained in the Government of India."<sup>1</sup> But according to the August 20th announcement the Policy of gradual development had to be applied in the structure of the Central Government also. For this purpose they were ready to enlarge the legislative Assembly by giving it an elected majority but no control over the Executive. The question naturally was as to how the authority of the Central Government could be kept intact with the application of the Principle of enlarging a legislature which was unicameral at the time of their enquiry. Dyarchy was a novel proposal which could not be applied safely to the Central sphere. "The institution of an Assembly with a large elected majority 'confronted them' with the problem of enabling the executive government to secure its essential legislation and its supplies."<sup>2</sup> One possible alternative was of relying for legislation on superior authority and that was British Parliament. But the Parliament was "too far off and notoriously too pre-occupied and not ~~a~~ suitably constituted to pass laws for the domestic needs of India."<sup>3</sup> The Second alternative was to rely on the Governor General's power of making

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1. Joint Report, p 83.
  2. Joint Report, p 131.
  3. Joint Report, p 131.

temporary ordinances for certain emergent purposes.<sup>1</sup> The utility of this procedure had amply demonstrated itself during the crucial years of war. It was recommended therefore to be retained.<sup>2</sup> But ordinances are only temporary in nature. The question was the enactment of laws of a permanent character for which ordinances were not proper remedy. Secondly the ordinances could only be proclaimed during emergencies. Thirdly proclamation of ordinances required 'no opportunities for public debate or criticism.'<sup>3</sup>

What was required by the authors of the Joint Report was "some means for use on special occasions, of placing on the statute book, after full publicity and discussion, permanent measures to which a majority of members in the Legislative Assembly might be unwilling to assent,"<sup>4</sup> without having recourse to unpopular method of ordinance making. While dealing with the same problem in Provinces. The authors recommended a device to secure such essential legislation through the Grand Committees. These committees had to comprise of 40 and 50 percent of the total strength<sup>5</sup> of the Provincial Legislative Councils. The members were to be chosen for each bill, partly by election by ballot and partly by nomination. The Governor was to have the power of nominating a bare majority exclusive of himself to the committee.<sup>6</sup> It was proposed that on reference to Grand Committee a bill was to be debated there in the ordinary course and if necessary it could also

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1,2,3. Joint Report, p 131.

4. Ibid, p 120.

5. Ibid, p 121.

6. Ibid, p 131.



be referred to a select Committee appointed by the former body. The bill as it emerged from that Grand Committee was to be reported to the Legislative Council, which could neither reject nor amend it except on the recommendation of a member of Governor's Executive Council.<sup>1</sup> In the Provinces most of bills necessitating such complicated procedure would have been concerned with the reserved half. The problem in the Centre did not appear in the same form. There was to be no division in the Executive. The solution therefore was not applicable in the Centre as the conditions of the Indian Legislation were different from those of the Provinces. "Matters are more important, the Government's responsibility to the Parliament is closer and the affirmative power must be more decisively used."<sup>2</sup> A more or less permanent and separate constitutional body in which the Government may be able to command a majority was the only solution to the Joint authors of the Report. Thus the proposals for the establishment of a Second Chamber, as it originally emerged, had its origin in the necessity felt by the Government to gain control over legislative. The authors of the Joint Report were left with no alternative but to propose bi-cameralism for India. They themselves accepted the open truth that they were not proposing a complete bi-cameral system<sup>3</sup> but a Second Chamber to be known as the Council of State, which shall take its part in ordinary Legislative Business

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1. Joint Report, p 131.

2. Ibid, p 131.

3. Ibid, pp 131-132.

and shall be the final Legislative Authority, in matters which the Government regards as essential,<sup>1</sup> As a Second Chamber its role was to be that of a "revising authority", but the revision of measures was to be its secondary function though not the least important. It was to act primarily as a Government organ of legislation.

The suggestion that the Ruling Princes or some representatives of their order should be members of the Council of State was abandoned as it infringed on the doctrine of non-interference. But it seemed expedient to the authors that when a Council of Princes, a Council of State and a Privy Council were established, the machinery could be used for bringing the senatorial Chambers into closer relation with the Rulers. Matters affecting the native State and British India generally, were to be referred to the Council of State and the proposed Council of Princes or to the representatives of both these bodies. The proposal was however, abandoned.

It was with this view in mind ( to make a Council for the Official Legislation primarily) that they recommended the creation of a Second Chamber with a membership of 50. Out of this number 25 were to be officials, 4 nominated non-officials, 2 directly elected representatives of Muslim Community on an All India basis, 2 landlords and 2 representatives of the European Chambers of Commerce. The remaining 15 members were to be elected by the non-official members of the Provincial legislative

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1. Joint Report, pp 131-132.



councils. The Viceroy was to be the President with power of appointing his deputy.<sup>1</sup>

On a closer examination of these proposals it became obvious that the apparent equality between the official and non-official blocks in the Council was merely a farce. Rather the arrangements were so cleverly knit together that they were bound to create a majority for the Government. Beside the nomination of 25 officials, the Governor General was given the power to nominate 4 non-officials. Thereby the total strength of the nominated block would become 29 in a Council of 50 members. But the matter did not stop there. Among the 6 directly elected members, 2 representatives of the Chamber of Commerce and 2 of the Landlords, having vested interests in the country were bound to be a conservative force giving their whole hearted support to the official policies.

Even the Moderate opinion for whose favour Mr. Montague had laboured hard was opposed to the creation of such a revising Chamber. Sir C. Sankaran Nair in his minute of dissent, while appreciating the intention of establishing an Upper Chamber for the purpose of securing delay in legislation, for calmer deliberation of hastily considered measures of the legislative Assembly and for the representation of special interests, depreciated its proposed composition and function. Its avowed purpose was to carry out the will of the Executive Government when the latter could not do so in the teeth of popular assembly's opposition

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1. Joint Report, p 132.

the employment of the Council of State for this purpose would give such measures an unreal appearance of popular support. The resulting situation might be an over-growing bitterness between the Council of State and the Legislative Assembly on one side and Legislative Assembly and the Executive on the other. It would not thus be harmful to the powers of the Legislative Assembly but also to the day to day administrative business of the Government.<sup>1</sup> As to its proposed composition, the Government of Bengal hinted on, "the difficulty of securing members"<sup>2</sup> who could be able to represent in Muslims and the landed interests in India as a whole.<sup>3</sup> Indeed the problem of filling these 6 seats directly elected on an all India basis was so intricate that His Excellency the Governor in Council of Madras found himself "unable to devise any particular scheme for those six seats that should secure the object in view."<sup>4</sup> The proposals of other Provinces for filling these six seats were so different from such other that the Franchise Committee were at a loss to offer

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1. Government of India's First Despatch on Indian Constitutional Reforms Part II Minute of Dissent by Mr. C.N.Sankaran Nair, p 8.

2,3 and 4. Letter No. 45 dated the 6th February, 1919 from the Government of Madras to the Government of India and the letter of the Government of Bengal to the Government of India, Appendix XIV, Franchise Committee Report, p 131.



any practicable suggestion for their election.<sup>1</sup>

Lesser use of the power of Certification, according to Mr. W.H.Vincent required the reconstitution of both the proposed Chambers in such a way as to give the Government measures a reasonable chance of being passed at a joint sitting, if a fair share of support could be secured from the moderate Indian opinion, and not by the Council of State alone as was proposed in the Report. He, therefore, suggested the curtailment of the elective element in the Legislative Assembly from 66 to 60 per cent and the transfer of landholders and representatives of Commerce to their proper place in the Council of State. These changes according to Mr. Vincent were to give the "Council of State the regular character of a revising Chamber."<sup>2</sup> He was also opposed to the proposed direct representation of conservative elements in the Central Legislature and said it was "wrong even as a temporary expedient."<sup>3</sup>

Thus it will be seen that even the opinions of the Viceroy's Executive Council and the Provincial Governors were sharply divided on the question of constituting the proposed Second Chamber.

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1. Franchise Committee Report, p 201. For the Proposals of Provincial Government to fill the directly elected seats see letter No. 7535 A dated 21st Dec., 1918, from the Chief Secretary to the Government of Bengal to the Government of Bengal India; and Memorandum by His Honour Lieut. Governor of U.P. on paragraphs 273-274(L.A.) and 277-278(C.S.)- Vide Reforms Office File 12/19, Home Department.
  2. Minute of Dissent by W.H.Vincent: Government of India Fifth Despatch on Indian Constitutional Reforms, p 3. See also Congress Resolution passed in the Bombay (Special Session) 1918. which reads: "That there shall be no Council of State, but if a C.S. is to be constituted, a system of reserved and transferred subjects similar to that proposed for the Provinces, shall be adopted for the Central Govt. Atleast half of its total strength shall consist of elected members and procedure by certification shall be confined to the Reserved subjects." Commenting on proposals of the Report Dr.B.P.Sitaramayya observes, "The

The basis of all these contentions was the suggested purpose of the Council of State as a Government organisation. It was therefore impossible to find out a solution without bringing about a change in the fundamental objective of the proposed Council. To combine the functions of a Second Chamber with those of an official legislative body and yet to outline a satisfactory constitution was a hard nut to crack.

The Joint Parliament<sup>ry</sup> Committee rejected the plan altogether as they saw "no necessity to retain the Council of State as an organ for Government legislation." They wanted that "it should be reconstituted from the very commencement as a true Second Chamber." The Governor General in Council was to retain full powers to secure legislation required for the discharges of his responsibilities. It followed that there was no longer the necessity of having an 'official Second Chamber'. Once this question had been settled, the problem became easier. But the next issue as to how the Council of State may be constituted to portray the character of a true Second Chamber was no less perplexing. On one side there was the opposition by the Government and on the other there was the question of establishing a 'true Second Chamber' in India which was still an ideal to be attained in countries even where bicameralism has taken deep roots in the soil. There were no definite proposals before the Committee. Neither the Duke and Ninteen Memoranda, nor the Congress-League nor Mr. Gokhale's schemes had suggested a Second Chamber & for



this country. The idea originated in the minds of the Authors of the Report, but the basis of their thinking was different from that of the Joint Committee, and so the latter could not profit by the Scheme of the Report, to which they raised fundamental objections.

Every political thinker and statesman agree that there must be a marked difference in the composition of the two Chambers where bicameralism is established. The practice in almost every democratic state is that the Upper Chamber represents the higher classes of Society elected or selected on the basis of higher and narrower franchise while the Lower Chambers is broad based. Secondly the Upper Chambers are comparatively smaller in size than the Lower. This compactness of size gives them dignity and every one of their numbers usually gets more time to speak on problems than their colleague in the Lower branch of the Legislature. But where the device of joint session is provided by the Statute for the solution of their mutual differences, the Upper Chamber being numerically less strong is generally over powered by the Popular House and thus the principle of popular sovereignty remains intact leaving the Upper Chamber with a suspensory veto. The class which can effectively check the hasty and ill considered legislation enacted in the party spirit by the popular chamber is the class which has most to loose by such legislation, and it is this class which should be given adequate representation in the Second Chamber.

But the proposed experiment of bicameralism in the Government of India was novel, firstly because unlike other Dominions there was no representative Government to be established by the Act of 1919 and therefore there existed no danger of hasty and partial legislation by the popular majority of the Legislative Assembly. It was created to work as a check upon the irresponsible acts of the Assembly in political and financial matters, and, secondly to act as a true revising body on the controversial social legislation proposed by the private members of the Legislative Assembly and thus saving the time and energy of the executive head of the State by its revisionary activities. The change in its purpose from being a body of official legislators to that of a true Second Chamber, was bound to bring about a substantial change in its character and proposed composition and in the ratio of official, non-official, nominated and elected elements.

The electorate of the Council was so framed as to give it a distinct character from that of the Legislative Assembly. The franchise was extremely restricted. Property qualifications were pitched so high as to secure the adequate representation of a wealthy landowners and merchants. Other qualifications like the previous experience of membership of a legislative body, Chairmanship of a Municipal Council, membership of University senate and possession of high titles of learning, enfranchised a very small number of these classes. Electors were grouped in Communal



constituencies for example one member of the Council of State was elected by the Mohammadans of Madras Presidency and four by non-Mohammadan voters of the same area. The Sikhs of Punjab had one member; one member was elected on a general ticket and another on that of Burma Chamber of Commerce. Women were not entitled to vote untill 1935 when the Government of India amended electoral rules on the recommendation of the Council. In order to give it a continuity with the past it was given a longer lease of life, that is, five years as compared to the three years life of the Legislative Assembly.

Now the question as to why the Government of India accepted the recommendation of the Joint Parliamentary Committee requires a reasonable answer. It should be noted at the very outset that the Council of State was given a slight elected majority. The one reason for accepting this majority can be discerned in the experience recorded by the Government of India through the working of the Provincial Legislative Councils prior to 1919. "The main point of difference,... is the fact that in all the Provincial Councils there is non-official majority and in Bengal a small elected majority. But the fact that absentees are more numerous among the non-official than among the official members tends to impair the effectiveness of the non-official majority."<sup>1</sup>

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1. Joint Report p 49.

Secondly the Government of India Act gave a blank cheque to the Governor General in providing for electoral qualifications to be pitched by the latter whose intentions were cleared in the Fifth Despatch. The Government of India in their despatch or Franchises remarked that as they were anxious that the Council<sup>1</sup> "should partake the character of<sup>a</sup> hall of elder Statesmen;" it was with that purpose in view that its membership<sup>2</sup> was to be subjected to a high standard of qualification. They wanted to provide for each Province an electorate of from 1000 to 65000 voters possessed of the same qualifications "as those which should prescribe for membership of the Council of State who should be required to elect to that body from among their own number."<sup>3</sup> This electorate was bound to yield and it actually yielded to propertied and vested interests a majority of seats and it was this contingent on whose support the Government could rely.<sup>4</sup> Thirdly no regular allowances except T.A. were provided for members who were to lose more than to gain from attending the meetings of the Council.<sup>5</sup> Fourthly the distance of Simla and Delhi from Southern India was so wide that it really deterred elected members from attending regularly the meetings of the Council and fifthly and Communal composition of the Council was

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1. Government of India's Fifth Despatch on Constitutional Reform, p 13.

2,3. Ibid.

4. Simon Report, Vol. I, Survey, pp 225-228.

5. Ibid, p 221.

5. Ibid



such that the Government could easily secure favour from one or the other group in the Council. At the time the Simon Commission visited the country communal composition of the two Chambers including the official members was as follows:-<sup>1</sup>

	<u>Hindus</u>	<u>Muslims</u>	<u>Europeans</u>	<u>Depressed Class</u>	<u>Other Minorities</u>
C.S.	21	17	16	Nil	6
L.A.	70	38	25	1	11

This uneven Communal grouping "which has often affected the voting in the Legislature, gives some explanation of the unexpectedly strong position in which the Government has frequently found itself". The Statement couched in general terms applied more particularly to the Council of State as the Communal *disensions* inside it were more sharp and the position of minorities more effective than in the Legislative Assembly.

The elections of the Council of State were contested not on political lines. The franchise was so framed as to give representation to classes and interests and the candidates relied more and more on their personal popularity and social status. The same was true of the Second elections except the nine members who were returned on a political ticket and supported by the Swarajist Party with the result that there emerged a regular Swarajist group in the Second and subsequent Councils. The group formed the nucleus of opposition against the Government.<sup>2</sup> The <sup>third</sup> fourth Council of State saw the formation of progressive party which was joined by the Swarajists and liberals like

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1. Simon Report, Vol. I, Survey, pp 225-228.

2. Simon Report, Vol. I, p 228, and Memoranda submitted by the Government of India to the Simon Commission, p 36.

Mr. P.N.Sapru, Sri P.C.Sethna, Pt.Hirday Nath Kunzru, Rai Bahadur Lal Ram Saran Das and Mr. Husain Imam. The two last named<sup>1</sup> were the leaders and deputy leader of the party respectively. Mr. Husain Imam left the party in 1939 when he became the leader of the Muslim League party that year.

Nearly all the expectations of the framers of Reforms were fulfilled. The Council had no distinct political colours - an attribute which is deemed essential for a revisionary body and which is difficult to obtain for a Chamber whose utility lies in its impartial, dispassionate and calm deliberations of the Controversial issues. Absentees were also most numerous among the elected members; division of members into classes and interests and over all the communal groupings; the absence of any influential and strong party all contributed in giving a quite different character to the Council from the Legislative Assembly. After eight years of working, the Simon Commission remarked: "The Council of State represents the more conservative elements in the country, in particular, sections of society which have most to lose by hasty and ill considered legislation. It is not surprising therefore that it has taken a different view on many questions from the Assembly, which regards itself as representative of Progressive Political opinion."<sup>2</sup> <sup>Two</sup> The alterations resulted in its functions from the recommendations of the Joint Select

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1. Council of State Debates (Official Report) dated 14<sup>th</sup> Dec, 1932 p 425
  2. Simon Report, Vol. I, p 225. See also Memoranda submitted to the Statutory Commission to the Government of India, p 81



Committee of Parliament. One was the abolition of its proposed authority to work as sole government legislator for purposes of essential legislation. The other was disappearance from its functions to act as British India's representative in deliberations on matters of common concern to the Indian India and British India.

Most of Indian authors and politicians have either not made any remarks on the constitution and working of the Council of State or if they have done so, they have dismissed it as a completely reactionary body acting as a dead weight against the popular opinion. They have passed such a judgement by estimating with the yard stick of the legislative Assembly, or because it frequently supported the Government on measures rejected by the former. So far as its electorate its composition and its support of official policies was concerned, the statement is true to some extent only. But in their fury of nationalistic enthusiasm which perhaps demanded the total rejection of every act and institution owing its origin to the Britishers, they have forgotten not only those functions and acts of the Council for which it equally shares credit with the Legislative Assembly, but even its proper functions as a Second Chamber. Its sense of realism has actually been lost sight of in their critical eye. And it is one of the purposes of this thesis to bring to the knowledge of all concerned the part played by the Council of State in the legislative annals of India, the worthy traditions of a Second Chamber that it handed over to posterity.

The expression of the desire by princes in the Round Table Conference to join the Indian Federation strengthened the case for the retention of the Council of State with necessary extensions and modifications in its membership. One great improvement suggested by the new scheme was the removal of the official block from its membership. But the constitution of the Council of State was linked up with the proposed relations between the federation and Federated States and the relations proposed to exist were unacceptable to several important states. Secondly, solution of the problem of States representation as against that of British India was unacceptable both to the political parties and to the princes because each of them was afraid of being overpowered by the other in both chambers of the Indian legislature. Thirdly, there was no accord among States on the division of State Seats among themselves and finally the Act of 1935 suffered from the inherent defect of trying to combine monarchy and despotism with democracy and responsibility. All these defects joined to bring about the failure of the proposed Federation before its inception, and the proposed new Council of State (1935) being a part of the Federal Plan did not come into existence. We can, therefore, do nothing better than to examine its background and the proposals from the point of view of every interested party and of our own in the separate chapter.

#### Bicameralism - its background

The twentieth century has so rapidly seen the rise and fall of Second Chambers all over the world that it has become almost impossible to justify



or abjure altogether the bicameral system on merely theoretical grounds. Even during the earlier part of the present century when the Government of India Act 1911 was on the anvil and till shortly after its application in the twenties, the process of decay and growth were in full swing. On the one hand there were Esthonia, Bulgaria, Jogoslavia, Latvia, Lithuania, Finland and Turkey which totally discarded the Upper Chambers,<sup>1</sup> while on the other, the Polish constitution of 1921 and those of Czechoslovakia,<sup>2</sup> Germany, Italy, Australia, South Africa, the two Eirelands,<sup>3</sup> Iraq, Syria, Egypt, Iran and other princely states of Asia did ~~not~~ join for one reason or the other, an Upper Chamber with the Lower ones. In France, the radicals continued to demand the abolition of the Senate for a quarter of a Century, but reconciled to it as soon as they captured it.<sup>4</sup> In Switzerland there was a proposal to abolish the Council of States but it never materialised.<sup>5</sup> Even in England and Canada, there was deep dissatisfaction ( and in the latter still is)<sup>6</sup> with the existing Second Chambers. Numerous projects of reform have since long been discussed,<sup>7</sup> but their

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1. A.H.Morley: The New Democratic Constitutions of Europe (1929) p 45 and also M.W.Graham: New Governments of Eastern Europe (1928) pp 212-391, 297, 341.
  2. H.M.Morley: The New Democratic Governments of Europe.
  3. See Constitutional Development in Islamic World by Prof. R.C.Ghosh.
  4. The Government of France by Joseph Bathelmy, p 64.
  5. Government and Politics of Switzerland: Robert C.Brooks, Chapter IV, p 90.
  6. Responsible Government in the Dominions: Prof. A.B.Keith, Chapter VII, p 119.
  7. A.B.Keith: Constitution of England from Queen Victoria to George VI, pp 421-432.

downright abolition has not yet been secured.

This wide spread system of bi-cameralism has assumed the shape of a dogma for most Politicians, to whom deviation from the system has assumed the form of heresy. It has justified by Political thinkers on various grounds. To John Stuart Mill: "The same reason which induced the Romans to have two Councils make it desirable that there should be two Chambers; that neither of them may be exposed to the corrupting influence and undivided power even for the space of a single year."<sup>1</sup> Burgess based his justification on the legislative requirements. In the interest of the sound legislation you must find out the common consciousness of the people as distinct from their will. The Legislature must be so constructed as to best fulfill this purpose. "The interpretation of the Common Consciousness is a far more difficult matter than the registry of the popular will. It requires reasoning, the balancing of opinions and interests, the classification of facts, and the generalisations of principles. A single body of men is always in danger of adopting hasty and one sided views, of accepting facts upon insufficient tests, of being satisfied with incomplete generalisation, and of mistaking happy phrases for sound principles."<sup>2</sup> Two Chamber, he concludes,<sup>3</sup> will secure the golden mean between progress and conservatism."

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1. J.S.Mill: Considerations on Representative Government (3rd. Edition), p 241.

2 and 3. Burgess: Political Science and Constitutional Law, Vol. II, pp 106-107.



But the fact remains that no such ideas were responsible for the origin of the system. "It is commonly assumed that a single Chamber parliament must be a kind of constitutional monstrosity. This, I suppose, is due, in part, to the fact that almost every progressive community, in adopting representative institutions, has imitated the system which grew up in Great Britain. Yet this system of two Houses, of 'an aristocratic and a popular' division of the law-making apparatus is the result of a series of accidents. There is nothing in the nature of things, which prescribes that a Parliament should be divided into two compartments, and not more than two. There was a stage in our history when we had only one great Council of the Realm, and the arrangement might well have persisted. There was another stage when it seemed likely that there would be three Chambers - a Chamber of the Burgesses or the Commons, a Chamber of the gentry or the knights, and a Chamber of the greater barons and nobles - with a separate house for the Clergy, and perhaps another for the merchants and traders. And if that had been the course of evolution, no doubt eminent jurists and Political Philosophers would have been prepared to show that ~~it~~ the true adjustment of 'Checks and balances'. The happy medium of democratic licence and ordered freedom, could not possibly have been maintained without the conjoint existence of three Chambers, or four, or possibly five. It is true that in Great Britain, from the time of the Tudors to the end of

Queen Victoria's reign, the dual arrangement was successful, and indeed essential, but whether it is equally necessary in the future may be open to question.<sup>1</sup> Prof. Morgan points out that a legislature is now controlled by the Cabinet and does not imperatively require a check from another Chamber. A strong Second Chamber, he goes on, means either an ephemeral or a subservient body.<sup>2</sup> Prof. Hearn stated that if there be two representative Chambers and if one be formed on sound principles, the Second so far as it differs from the first, must deviate from those principles.<sup>3</sup>

The fact, is that, if the democratic principle is only partly admitted (as in India in 1919) and imperfectly applied it is expedient to have a Second Chamber based on a non-democratic Principle, but once the principle is admitted in full, it passes the wit of man to devise a satisfactory constitution for it.

Origin of the  
System in  
Dominions:

While in England bi-cameral pattern was  
one of the many child of accidents, it

was not necessarily so in most of the dominions. "It was originally considered that a Colonial Constitution in a settled colony could only be based on the model of that in force in the

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1. Sidney Low: The Government of England - Introduction, pp XIV-XV
  2. Horgan: Place of a Second Chamber in the Constitution, pp 9-10; 14-15.
  3. Hearn: Government of England, p 543.



mother country and it is significant prevalence of the idea that as late as 1791, the Imperial Act for the Governments of the Two Canadas contemplated the possibility of the Crown attaching titles of honour to the tenure of seats in the Upper House...<sup>1</sup> When the constitutional plan for Natal was under consideration in 1893, there were misgivings in the Colony that the Legislature might not be composed of two Chambers. The doubts were cleared only when the Secretary of State gave a candid understanding of the Imperial policy which deemed it gravely doubtful "to attempt to set up a legislature on other than the traditional basis"<sup>2</sup>. The policy has been so consistently pursued by the Imperial Parliament that every colony with responsible government today, has a bicameral system of legislature except the Provinces of Canada.

#### AND IN INDIA

In the Secretary of State's announcement the clearly set ideal for India was the achievement of dominion status through stages.<sup>3</sup> It was understood that by the time the status is achieved, democratic institutions should be established on the pattern of those in the responsible dominions. The germs of the bicameralism were, therefore, embodied in that historic statement which reset the scale of our constitutional progress.

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1. A.B.Keith: Responsible Government in the Dominions, p 102.
  2. Ibid, p 103.
  3. Report on Indian Constitutional Reforms, p 5.

One of the natural results of the historic circumstances in the Colonies has been that Upper Houses, being differently constituted are 'steadily conservative' in tendency as compared<sup>1</sup> with the Lower ones. In the cases of elective Upper Houses the general rule to which the Commonwealth of Australia offers the only exception is that the franchise for them is higher and restricted. In all cases, even beyond the Commonwealth of Nations, the Senators are required to be 30 years of age or even more and further in the case of Good Hope, in Victoria, Belgium and in most of the Asian Countries there is the prescription of<sup>2</sup> a property qualification for members of these Chambers.

As the idea of creating a nobility within the colonies with titles of honour accompanied by a seat in the Upper branch of the legislature was abandoned, the only convenient device which was bound to impart them a different colour was to base them on such a restricted aristocracy. Consequently for this reason (as well as for others) the franchise for the Upper Chamber in India was so framed as to give representation to classes and interests who had greater stake in the established government and were apt to lose more by hasty and ill-considered legislation than any other. The principle of historical continuity of the Constitution also pointed to the same direction. By the Act of 1900, the Government of India "hoped to create a Constitution about which the Conservative opinion would crystallise

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1. A.B.Keith Op.cit: pp 103-104.

2. Ibid, p 103 and T.H.Read: The Government and Politics of Belgium, pp 74-75.



and offer substantial opposition to any further change. They anticipated that the aristocratic element in Society and the moderate men for whom there was no place in Indian Politics would range themselves on the side of the Government and oppose any further shifting of the balance of power and any further shifting of the balance of power and any attempt to democratise Indian institution.<sup>1</sup>

These sanguine intentions were shortlived and in nine years time the Reforms of 1909 became a spent force, because as the Minto Government wrote that the "Indian gentlemen of position ordinarily refuse to a wide electorate partly because they dislike canvassing, and partly by reason of their reluctance to risk the indignity of being defeated by a rival candidate of an inferior social status."<sup>2</sup>

In 1919, it was inevitable for Government to bring this landed gentry into practical politics because as they wrote, "The natural and acknowledged leaders in country areas are the landed aristocracy."<sup>3</sup> Secondly, "by position, influence and education they are fitted to take leading part in public affairs,"<sup>4</sup> and thirdly, "they are conservative like the ryot, but like him they also will learn the need to move with changing times."<sup>5</sup>

It was naturally difficult for these so called aristocrats to face the same kind of electorate which was deemed appropriate

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1. Report on Indian Constitutional Reform (1918), p 38.

2. Ibid.

3,4 & 5. Report on Indian Constitutional Reforms (1918), p 72.

for the dominion senators ~~or~~ the same as was envisaged for the Lower Chamber of the Indian Legislature, because they stood upon a conception of social order which was "not easily reconcilable with the hustings and the ballot box."<sup>1</sup> But the constitutional advance on the dominion lines required them "to take their place in the new regime, and to recognise that political life need not impair their dignity and self respect."<sup>2</sup> The time had come when "like the representatives of their class in other countries they must learn to fulfill the responsibilities of their position in a new way"<sup>3</sup> in a new set up in which the authors of the Joint Report were insistent to give them "a special measure of representation."<sup>4</sup>

Apart from these causes, there was the fear of the consequences of the proposed enhancement of franchise for the Legislative Assembly, on the part of British rulers which was instrumental for the origination of the idea of bi-cameralism. "The institution of an Assembly with a large elected majority confronts us with the problems as in the case of the Provinces of enabling the executive government to secure its essential legislation and its supplies."<sup>5</sup> "Cases may occur in which the legislative Assembly refuses leave to the introduction of a Bill which the Government regards as necessary. For such a contingency we would provide that if leave to introduce a Government Bill is refused, or if the Bill is thrown out at any stage, the Government should have the power on the Certificate of the Governor

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1. Report on Indian Constitutional Reforms (1918), p 72.

2-4. Ibid.

5. Report on Indian Constitutional Reforms (1918), B 131.



General in Council that the Bill is essential to the interests of peace, order or good government to refer it~~to~~ <sup>denovo</sup> to the Council of State and if Bill after being taken in all its stages through the Council of State, was passed by that body it would become law without further reference to the Assembly. Further, there may be cases when the consideration of a measure by both Chambers would take too long if the emergency which called for the measure is to be met. Such a contingency should rarely arise; but we advise that in cases of emergency, it should be open to the Government to introduce a Bill in the Council of State and upon its being passed there merely to report it to the Assembly<sup>1</sup> and for this purpose they recommended an official majority for the Council.<sup>2</sup>

The Joint Parliamentary Committee rejected the proposal of making the Council an official organ for securing to the Government, its essential legislation at the expense of the legislative Assembly. In clause 26 of the Report, they wrote, For reasons which prompt their rejection of the process of certification by a Governor to a Grand Committee in a Provinces, the Committee are opposed to the proposals in the Bill which would have enabled the Governor General to refer to the Council of State and to obtain by virtue of his official majority in that body any legislation which the Lower Chamber refused to accept but which he regards as essential to the discharge of his duties...

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1. Report on Indian Constitutional Reforms (1918), p133.

2. Ibid, p 132.

they think it is unworthy that such responsibility should be concealed through the action of a Council of State specially devised in its composition to secure the necessary powers.<sup>1</sup> The Official majority was therefore abandoned.

The Council of State was therefore composed of 60 members - a number worthy of a Second Chamber. The number of elected members was 34, while the nominated element comprised of 20 officials and 6 non-officials. The franchise was given to 17644 in 1921; to 32126 in 1926; to 40513 in 1931,<sup>2</sup> with slight increase in the electorate of India after the separation of Burma in 1935. The natural result of this small franchise based on high property and income-tax qualifications was that during the lives of the four Councils which were constructed on that plan, half of the elective seats went to the landlords, one-third to the commerce and remaining to the miscellaneous classes.<sup>3</sup>

As the elective legislative Councils of the dominions have in law atleast, co-ordinate powers in legislative matters<sup>4</sup> there seemed, therefore, no reason why the Council of State should be deprived of that position. Even in financial matters the practice of the Imperial Parliament is supposed to be followed.<sup>5</sup> Thus, in the constitutions of Victoria, Southern and

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1. Report from the Joint Select Committee on the Government of India Bill 17th Nov., 1919, Part II, p 9.
  2. Memoranda submitted to Indian Statutory Commission by the Government of India, p 36.
  3. Reforms Office File 133/31 R. Return showing the Results of Elections in India 1929-31. Presented by the Secretary of State for India to Parliament by command of His Majesty July, 1931, See also Simon Report, pp 221-24.
  4. A.B.Keith Op.cit. p 104.
  5. Ibid, pp 104-106.



and Western Australia, Tasmania, Cape and in that of the Commonwealth of Australia, the usual provisions exist, requiring the assent of the Governor General or the Governor to any appropriation proposed and though elaborate provisions are made to secure that all appropriation and taxation Bills should be initiated in the Lower House; the Councils are free to amend or to suggest amendments to these measures.<sup>1</sup> But in a sense, indeed the Upper Houses are inferior, not because of any direct statutory limits on their authority, but as Prof. Keith observes, "Partly tradition and still more the lack of financial initiation have produced the result that the Government of the day is controlled by the wishes of the Lower House and not of the Upper."<sup>2</sup> The Upper Houses thus exercise a semi-independent function of criticism and objection.<sup>3</sup>

The Government of India Act did not place any restriction on the Council except that it could not vote the Budget. The ordinary legislation and the finance Bills were however to be passed by both the Chambers. Much was therefore left; as in the case of other dominion Upper Chambers, to the sense of the Council to participate as a Hall of Elder Statesmen and also to the whims of the Government which exercised by its position in the Council, a substantial influence over its decision. The extent to which the Council of State was to imitate the position of its Sister Chambers in the dominions, was left to the traditions to be developed.

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1. A.B.Keith Op.cit, pp 104-106.

2,3. Ibid, p 107.

But the procedure regarding the certified Bills was a novelty of the Act. If the Assembly rejected a Bill it could be sent to the Council of State on recommendations of the Governor General, and if passed by it, the Bill could become an Act on receiving a Certificate by the Governor General and without any further reference to the Assembly.

What the most critics lack is the correct understanding of the spirit behind the institution. The spirit behind the institution has been summed up by Prof. V.G.Kale, one of the earliest members of the Council in a most Comprehensive manner, in the following words :

"They are supposed to exercise a steadying influence upon the work of legislation, to afford an opportunity for the mature deliberation and the revision of measures, to assist in maintaining a continuity of Policy and to provide an avenue for the representation in the Legislature of talents, experience, capacity and interests which cannot be and are not otherwise utilized for the Service of the Public."

It is in the light of this Statement that one should examine the Constitution and working of the Council of State and it is from this point of view that an endeavour has been made in these pages.

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1. V.G.Kale: Indian Administration (1927), p 213.



CHAPTER II

Constitution and powers of the Council of State.

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Constitution

The Council of State from the very commencement was "to be constituted as a true Second

<sup>1</sup> Chamber." An assembly charged with the task of revising of legislation must be efficient. In order to be efficient it must be smaller in size as compared to the popular House. This smallness of size must have the effect of making its deliberations and decisions effective. The House of Lords is larger than the House of Commons and the largest Second Chamber in the World. "Its practical importance is either proportioned to or the result of its unwieldy bulk would be a proposition hardly susceptible of proof." Thus the English Constitutional History in general and that of the Upper Chamber in particular has been an eye opener for the advocates of effective and efficient Second Chambers.

As a result, in nearly all the democratic countries which have adopted bi-cameralism, the Upper Chambers are numerically less strong than the Popular Lower Chambers. Thus among the Unitary States French Senate under the Constitution of 1875 had a membership of 314 persons as against 618 members of the Lower House. The <sup>3</sup>present Council of the <sup>iv</sup>Republic consists of 320 members while in the National Assembly there are as many as 619

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1. Joint Select Committees Report on the Government of India Bill, 1919, Part II, p 8.
  2. Marriot, Mechanism of the Modern State, p 422.
  3. E.M.Sait, Government and Politics in France, p 127.

<sup>1</sup> members. Even the British House of Lords under the brief Republican era was to comprise not more than 63 members, provided <sup>2</sup> the Protectors attempt had been crowned with success.

The Belgian Senators are 153 in number as compared to 186 <sup>3</sup> Deputies. Seanad Eireann of the Irish Free State is composed of 60 members, while the House of Representatives has as many as <sup>4</sup> 138 members. Northern Ireland under the Constitution Act of 1920 has a senate consisting of 2 ex-officio members and 24 persons elected for four years <sup>5</sup> by the Lower House, the total strength of the latter being 52.

The tradition is closely followed by the Asian Constitutional documents. The Organic Law of Egypt, framed under the British influence provided for a legislative council containing 30 members as against 84 in the Lower Chamber. Egyptian Constitution of 1923 maintained approximately the same proportional strength <sup>6</sup> between the two Houses. Similarly the Senate of Iraq is composed <sup>7</sup> of 20 as against 115 members in the Chamber of Deputies.

Dominion Constitutions of Australia, Canada, S.Africa, and of the United States' constitution, in spite of being Federal in <sup>8</sup> character, have followed the same principle.

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1. Munro: The Governments of Europe, p 401.
  2. Marriot: Op.cit page 398.
  3. T.H.Reed: Government and Politics of Belgium, p 81.
  4. Nicholas Mansergh: The Irish Free State, Its Government and Politics, p 78.
  5. OGG and Zink: European Governments and Politics, p 379.
  6. Ramesh Chandra Gosh Prof, Constitutional Development in the Islamic World, pp 67, 120.
  7. Ibid, p 251.
  8. Australian Constitution provides for 36 Senators - 6 from each of the 6 States. See the constitution of the Commonwealth, Art 7. S.Africa Act of 1909, sec.24, provides for 40 members, 8 nominated and 32 elected. Canadian Senate has 96 members, 24 from each of the 4 provinces - originally the British



In India, the original proposal was to set up a Council of State having a membership of 50 as against a Legislative Assembly of 100 members.<sup>1</sup> In their Fifth Despatch the Government of India accepted the recommendation of the French Committee to increase the total strength of the Council to 56.<sup>2</sup> But the Government of India Act finally fixed the strength of the Council at 60,<sup>3</sup> while that of the Legislative Assembly was raised to 140.

Second Chambers are generally constituted in two ways. Either they are wholly elected, or wholly nominated. The Senate of Canada, the Legislative Councils of New South Wales, Queensland, New Zealand, Natal and of the two Canadian Provinces are wholly nominated.<sup>4</sup> The Senate of Australia, and U.S.A. and the Council of Republic of France are entirely elected bodies.<sup>5</sup> In India a compromise was made between the Australian system of pure election and the Canadian system of entire nomination.<sup>6</sup> Indian constitution prior to 1919 had the experience of this type of legislatures. The Imperial legislative Council being the single Chambered legislative body in the Centre, and all Provincial Councils were composed of this unhappy mixture. Indeed Colonies and Protectorates in the East, marching towards

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contd. from previous note:

North America Act provided for 72 members, 18 from each - vide Federations and Unions within the British Empire, p 127. And Section 21 of the Act.

2. Joint Report, p 132.
2. Government of India's Fifth Despatch on Frenchises, p 19.
3. Government of India Act 1919 Sec. 18(1) and 19(2).
4. A.B.Keith, Responsible Government in the Dominions, pp 103-104.
5. Constitution of the Commonwealth of Australia, Article 7.

full responsible Government had to pass through this ordeal of the combination of opposites. Egyptian Legislative Council under the Organic Law of 1885 had 14 out of 30 members, nominated by Khadeve for life on the recommendation of the Council of Ministers. This nominated element was there supported by Lord Duffrin on the ground that it would ensure the cooperation of experienced men and represent non-Muslim communities otherwise unrepresented.<sup>1</sup> The Egyptian constitution of 1923 provided for two-fifths of the total number of senators to be nominated by the King.<sup>2</sup> The Iranian Senate, under the present constitution<sup>3</sup> has an equal number of nominated and elected members. Nor did the Indian Council of State stand as a solitary exception among the Dominion Upper Chambers. The South African Act of 1909 provides for 8 members to be nominated by the Governor General to the Senate, in addition to 32 elected members.<sup>4</sup> The Upper Chamber of Newzeland, since 1920,<sup>5</sup> had 3 nominated Maori Members and 40 members directly elected.

As the object of the Council of State changed from that of being a Legislative organ for Government purposes alone, to that of being a true Second Chamber,<sup>6</sup> the original proportion between the elected and nominated members underwent a drastic change.

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1,2. Ramesh Chandra Ghosh Prof. Constitutional Development in the Islamic World, pp 67, 120.

3. Ibid, p 173.

4. S.Africa Act 1909, Section 24.

5. Marriot, Sir John A, The Mechanism of the Modern State, p 418.

6. Joint Elect Committee on Government of India Bill (Report)



The Joint Report proposed for 21 elected and 29 nominated members.<sup>1</sup> Sir Dinshaw Wacha in the Reforms Informal Advisory Committee<sup>2</sup> suggested an increase in the elective element, but the proposal was turned down and the Government of India Act<sup>3</sup> fixed the total strength at 60 of whom 20 were to be officials. The Electoral Rules framed under the Act provided for 27 nominated members. They were divided into 2 compartments - (1) Nominated officials whose number could not exceed beyond the statutory limit of 20, and (2) Nominated non-officials, including one<sup>4</sup> person nominated as the result of an election held in Barar. Thus actually there were 26 nominated members and 34 were elected.

The first group comprised generally of 2 members of the Viceroy's Executive Council, one incharge of the Department of Health, Education and Lands, and the other of the Department of Law.<sup>5</sup> One of them was designated as the Leader of the House,<sup>6</sup> mostly an Indian. "The only wise thing that the Government of India have been doing consistently for the last 16 years is always to pick out the best of the Executive Councillors and to appoint him Leader of the Council of State. I know the honourable Sir Mohammad Habibullah, the late Sir Fazle Husain and now our present leader, and I am sure all honourable members will agree with me that no other member of the Viceroy's Executive

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1. Joint Report, p 132.

2. Reforms Office Proceedings, June, 1920.

3. Government of India Act Section 18(1).

4. Electoral Rule 1(2).

5&6. Council of State Debate Official Report 1920-45.

Council would be more fitted to be leader of this Honourable House, than our present leader. I may further submit that we have luckily as Members of the Government those valiant Secretaries who really run the Government of India. However brief the replies to our questions they give us the impression that they mean to do what they say. That would not be the case if the reply is given by an Executive Councillor. And the honourable Chief Commissioner for Railways couches his replies in such a way that although he always refused what I asked I feel somehow indebted to him. This small pink book of Standing orders of 108 pages contains such matter as even those people who have been in the legislature for a number of years have still to look up every ten minutes and still make mistake, we are grateful to the Secretary of the Council of State Mr. Lal who always readily helped us and was always obliging."

n The rest of the 7 members of the Executive Council were generally nominated to the Legislative Assembly. The remainder of the group comprised Secretaries to the Government of India and nominees of the Provincial Governments. In fact the number of these officials in the Council never rose beyond 17 and fluctuated between 14 and 17.<sup>2</sup> It was because the Government could not spare such a large number of officials at the same time without incurring administrative inconvenience and (2) it could equally safely depend on the support of nominated non-officials. The Second group of this nominated bloc consisted of one person nominated by the Governor General to represent special interests

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1. Raja Ghazanfar Ali Khan speaking on the termination of the third Council of State on the 17th Oct., 1936, p 538.
  2. D.N.Banerjee Indian Constitution and its actual working, p 46.



and communities not otherwise properly represented.<sup>1</sup> A nominated non-official member was to hold office for the duration of Council of State to which he was nominated and was eligible for renomination.<sup>2</sup> Officials were usually nominated for similar term, but in their case the Governor General had the discretion to prescribe a shorter span (Rule XVII 2). Nomination for life was discarded firstly because the Council of State unlike the House of Lords or the Canadian Senate was not a permanent body. This was pernicious also because it tended to create stagnancy and made the Chamber "Steadily Conservative...as compared with the Lower House."<sup>3</sup>

Indian opinion was decidedly against the principle of nomination whether official or non-official. Sir Surendra Nath Banerjee condemned it on this ground the Institution of a Council in the Imperial Legislative Council while introducing a motion of thanks.<sup>4</sup> Though the proposed majority of nominated element was changed into minority by the Act, yet it was virtually this most solidly united minority of nominated members which dominated the whole scene throughout the life of the Council in face of a majority of elected members, who were divided amongst themselves by cliques and factions. Persons owing their position to official favour or being officials themselves could never be expected to act independently. "They had to regard the Government House as their constituency whose good will they were to cultivate and which they had to propitiate on all occasion."<sup>5</sup>

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1. Memoranda submitted to the Indian Statutory Commission by Government of India, Vol. I, Report, p 30.
  2. Elected Rule XVII(2).
  3. A.B.Keith Responsible Government in the Dominions, p 104.
  4. Proceedings of Legislative Dept. No.74, Oct.1918, p 256.
  5. N.C.Roy: The Constitutional System of India, p 189.

The elected members excluding the representative of Berar were 33 in number. Their mode of election was a warmly controverted topic throughout the years of reform. (i.e. 1919-20). A Second Chamber, elected on as broad a basis as the Popular House would have been an unnecessary supplement to the Legislative Assembly. Election by Political elite virtually means a negation of democratic principle. In most of the Asian countries, where a few years back democracy was in its infancy, the Upper Chambers, beside being revising bodies, were considered as National Guardian of infant Democracies. Peoples most advanced in material fields were enfranchised for these bodies. But the dependence of these vested interests on the stability of the existing Socio-Political structure made them conservative both in outlook and action. It was really to strengthen their own foreign domination or personal rule of the sovereigns that the Second Chamber, directly elected by these vested interests were super imposed upon the Popular legislative organs. Thus both the organic law of Egypt and the Egyptian Constitution of 1883 and 1923 (both under the British influence), beside giving almost co-equal powers to the Senate, pitched highest possible qualifications for its members and their electorate.<sup>1</sup> These qualifications were such as the possession of highest Military and Civil Honours, princehood and land-ownership.<sup>2</sup> The same high qualifications were fixed for Persian and Iraqi Senators. Direct election in India by vested interests was essential for

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1&2. Ramesh Chandra Ghosh: Constitutional Development in the Islamic World, p 120.



the continuity of hereditary principle as the Governor General remarked: "I see here what I may almost call the hereditary element represented by the great Zamindars, I see the leaders of the learned professions and I see men who have climbed the steep ladders which lead to success in the regions of commerce and Industry."<sup>1</sup> The Joint Report acknowledged the landed aristocrats of the country as the natural leaders of the people. Indirect election through the Provincial Legislative Councils could not ensure the true representation to these interests. It could also make the Council of State as Democratic as the Legislative Assembly was. The special interests like commerce and industry could easily provide a distinct basis for the Council of State. Finally, the compact and selected size of the electorate for the upper chamber, with their previous experience of voting and participating in the deliberation of the Legislative Bodies where they were particularly represented on the recommendation of Morley-Minto Committee, was a substantial ground for enfranchising these special and vested interests.

In their fifth despatch the Government of India wrote: "Having gone so far we should see no difficulty in advancing a step further and providing for each province and electorate ~~of~~ from 1000 to 1500 voters...who should be required to directly elect to that body from among its own number."<sup>2</sup>

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1. Council of State Debate Official Report 17th September, 1925, p 598.

2. Government of India 5th Despatch (Franchise), p 18.

Protesting against this system of direct election by the conservative elements of society, the Andhra Conference Standing Committee, in their Memorandum to the Government of India wrote, "to constitute an Upper Chamber with an electorate of 2000 wealthy men in a Presidency with an area of 124,000 sq. miles and a population of 42 millions will be very ill suited both to the needs of the country and the ideals of representation. The elected members of the Provincial Councils are a better representatives to the Upper Chamber."<sup>1</sup> Sir Tej Bahadur Sapru, in his capacity as President U.P.Liberal Association, recommended<sup>2</sup> for Indirect election. Sri C.P.Ramaswamy Aiyer, a member of Madras Advisory Committee on Reforms advised to adopt a via-media between the direct and indirect methods of election. He wrote, "I would therefore use such an electorate only for the purpose of electing about half the number of the elected members of the Council of State; the remaining half according to my suggestion would be elected in respect of each Province by the Provincial Legislative Councils."<sup>3</sup> But the proposal was bound to involve complications in the Constitution of the Council of State and beside making it commonly unintelligible would have made it far more heterogeneous a body than it actually was. Diwan Bahadur Mr. Rama Chandra Rao suggested the same course as was struck by<sup>4</sup> Mr. Sapru. But all these suggestions were rejected. The Government of India was reasonable in rejecting those proposals.

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1. Reforms Office Proceedings, June, 1920, p 55.
  2. Ibid, p 50.
  3. Proceedings of the Reforms, Informal Advisory Committee, June, 1920, p 11.
  4. Ibid, p 10.



Members of the Provincial legislative councils were themselves elected on a much more extensive franchise than those of either House of the Central legislature. These more popular assemblies if asked to return members to the Council, would certainly have returned as enthusiastic, public spirited, and progressive men to that body as they themselves were. Conservative elements differing amongst themselves, readily rallying to the support of Government struggling against each other for the perpetuation of their own interests, could only be sent through the gate of direct election by vested interests, and not by these more popular assemblies. And a foreign government with a substantial and well built minority in the Upper Chamber required the presence of these interests to pass measures defeated by majorities in the Popular Assembly. Only a body created on the basis of direct election and restricted franchise could ensure support for unpopular measures and give them the false guise of popular support. Government of India Act, keeping the method of election undefined, virtually gave a blank cheque to the Government of India which was filled by the latter in a manner suitable to itself. It virtually made the council an organ for securing the passage of necessary legislation as was recommended in the Joint Report.

Indian opinion was not idle. It recognised the dangers of the system of direct election by aristocracy. Mr. Sarma, was apprehensive, "that it might have the effect of enabling the

landed interest to swamp the Council.<sup>1</sup> The validity of the objection was admitted by the Government but it was disposed off by saying that the danger could be avoided by having separate<sup>2</sup> qualifications in respect of incometax and land revenue.

Division  
of Seats

Representation to communities and not to the territorial constituencies as such was part of the whole scheme of Reforms. Indian bi-cameralism of 1919 was not due to its being a federal policy, though the scheme approached a 'federal plan' in which the 'Second Chamber must represent provinces and not the peoples thereof.'<sup>3</sup> But the analogy is not correct as the Indian Council of State was representative of wealth among different communities residing in various provinces. General constituencies were bifurcated into Mohammadan and non-Mohammadan localities forming separate electorate for<sup>4</sup> Hindus, Mohammadans and Sikhs, in these Provinces.

Mrs. Beasant warned against the adoption of this pernicious system saying, that "no country can become prosperous or peaceful under such conditions. It enters on the downward grade and it will sink lower and lower. It loses nationhood and splits

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1. Reforms Office Proceedings, June 1920, p 42.

2. Ibid.

3. Proceedings of the Reforms Informal Advisory Committee, June, 1920, p 55.

4. Electoral Rule Schedule 1.



itself into fragments and can never play its part nor speak with authority among nations who have learnt that the nation is greater than any party, class or caste or interest. India that was growing into a nation is now going backward.<sup>1</sup> Even the past experience of local Governments pointed in the same direction. Mr. C.W.A. Turner officiating Chief Secretary, Government of Bombay admitted that "communal representation to my mind has led in the past few years to a very serious fall in the efficiency of local self-governing institutions and by that fall in efficiency the interests of the whole community must have suffered."<sup>2</sup>

Lord Chelmsford, one of the architects of the Act of 1919 was himself doubtful of the utility of the system when he said "I am frankly doubtful whether the best method for securing that (i.e. communal representation) is through a system of separate electorate."<sup>3</sup> Even the Joint Report itself was half hearted in supporting the communal system. "Division by creeds and classes means the creation of Political camps organised against each other and teaches men to think as partizans and not as citizens; and it is difficult to see how change from this system to national representation is over to occur."<sup>4</sup> However, the

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1. Work of the Indian Legislatures - Compiled under the order of the National Conference, p 254.
  2. "Hindustan Times", 17th October, 1928.
  3. Council of State Debates (Official Report), Vol. I, 1921, p 19.
  4. Joint Report, p 112.

Government of India was not ready to give way. The electoral rules framed by the Indian Government and sanctioned by the Secretary of State, provided for ten elective seats to be filled in by Muslims, one by Sikh and two by European Commerce. The remaining 20 seats were General and were left to the Hindu - Community. Thus in case of Muslim representation, the terms of the Lucknow Pact were substantially accepted.<sup>1</sup>

Indian opinion was not in favour of giving special seats to European Commerce in the absence of any representative of the India Commerce. Sir Dinshaw Wacha went even so far as to suggest an increase in the elective element so as to adjust the claims both the European and the Indian commercial classes. But the Government was neither ready to compromise nor to give up representation to the European Commerce.<sup>2</sup> We can say that the real aim behind all those tactics was to disintegrate the conservative majority of six and thereby to swamp the Council, whenever required by a solid bloc of nominated minority.

"Parliament should consist of no men whose prime concern is the programme of some group or the other, but of men who represent in the first instance the nation as a whole in all its varied aspects and activities...what is needed is not the accentuation and perpetuation of proportional sectionalism, not the stereo typing of represented minorities, but the emphasizing of the unity of the nation and the enlargement of the idea of patriotism. Not in the subtle devices to check and crush majorities but in the conversion of majorities to a

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1. Indian Electoral Rules- Schedule 1,11.

2. Proceedings of the Reforms Office, June, 1920, p 40.



magnanimous use of the omnipotence lies the way of deliverance.<sup>1</sup> The Council of State established by the Act of 1919 was a negation of nationalism. It represented groups, interests, minorities and what not. A revising body divided between organised communal and sectional camps, must lose its united opposition to the measures passed by the legislative Assembly. On the other hand it was made difficult for the Council to put hindrances to the passage of law which was really the embodiment of popular wishes. But the official strength of the council could also carry with it many of the elected members and the Government thus could secure the passage of bills or the rejections of measures by the Council in face of assembly's decision to the contrary.

#### Qualifications

The first qualification explicitly mentioned in the Electoral Rules was residence and community. Before discussing this and other qualifications it seems better to point out that the qualifications as recommended in 5th Despatch the qualifications required for the electors and for those to be elected were the same for all practical purposes.<sup>2</sup>

Now the qualification of residence within the constituency was not a rare one. Even inside the Commonwealth countries,

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1. Heranshaw Prof. Democracy at the crossways, pp 334-35.
  2. Government of India's Fifth Despatch (Franchises), p 18.  
See also Electoral Rule 4.

British-North America Act 1875 requires the residence of the person in the province, for which the senator is nominated.<sup>1</sup> The same qualification is provided for Senators and their electors in the United States of America. But in these countries the qualification is broader and the residence is not restricted to a particular constituency. In India the residential requirement was most limited. Residence within the constituency and not within the Province was provided.<sup>2</sup> The mischief of this requirement is two-fold "inferior men are returned, because there are many parts of the country which do not grow statesmen ...such men are produced chiefly in the great cities of the older states. There is not room enough for nearly all of them, but no other door are open. As such men cannot enter from their place of residence, they do not enter at all and the nation is deprived of the benefit of their services. Careers are moreover interrupted. A promising politician may lose his seat in his own District through some fluctuations of opinion, or perhaps he has offended a local wire-puller by too much independence...While other youngmen inclined to independence take warning from his fate."<sup>3</sup> But this incident was conspicuous by its absence in the electoral contests for the Council of State.

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1. Section 23 (5)

2. Electoral Rules, Schedule 1.

3. <sup>James.</sup> ~~Debbent~~ Bryce American Commonwealth, Vol. I, p 190.



The reasons were two-fold (1) the Electorate of the Council was selective and was conservative by nature. There was therefore no question of the existence of so many different outlooks among its leaders and hence there was no problem of losing elections due to the fluctuations of opinions which are generally more marked in the electorate and members elected by popular franchise. The record of electoral contest also pointed in the same direction. The contest between one candidate and the other was not generally based on political differences, but on their personal popularity and social status. (2) The members were representative of classes and interest which were faced with the same problems throughout the country and therefore, there was no question of parochialism.

The residence qualification is generally aimed at keeping close connection with and a real knowledge of the peoples and their problems. But in India so far as the Legislative Assembly was concerned the system failed to achieve its object. Reforms Office recorded in 1927 that "during the elections they go round their constituencies and address public meetings and issue manifestoes. Once they are elected, their electorate ceases to take any interest in their doings, nor does the representative take any interest in the welfare of the electorate. This view is supported by local Governments whose replies will be put if required."<sup>1</sup> But on the other hand, the comparatively smaller

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1. Reforms Office File (Confidential) No. 70/1/27, p 48, prepared for presentation to the Simon Commission.

size of electors of the Council of State made it practicable for them to exert their influence on their representatives.

The duration of residence was fixed differently for different provinces. In Madras, Bombay, Bengal and United Provinces the candidate and elector both were required to be residing in that constituency for atleast 120 days previously. In C.P. it was 180 days, while in Assam, Bihar and Orrissa and in Punjab it was unspecified.

This limitation was further tightened by combining another qualification. It was essential for a member and an elector alike to be the member of the community whose constituency it happened to be, the result was, contrary to the wishes of extremist politicians, that the citizenship was not represented in the Council because its proper place was in the Legislative Assembly. On the other hand the wealthier and politically conservative sections of every community were given an opportunity to send the best, influential, and capable men, men who had the practical experience of legislative bodies, to represent them in the Upper Chamber which was designed to be collectively representative body of maturity and wealth as against the Legislative Assembly representing the middle class intelligentsia.

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1. Work of the Indian Legislature, p 264.



The high property qualifications were prescribed both for the elector and the candidate. These qualifications differed from province to province and community to community. Generally they fluctuated between an income of Rs. 10,000/- and 30,000/- a year. For Muslims being a poorer community, the qualification was generally lowered. In order to bring them on an equal footing with the general voters, it was suggested that either qualifications for Muslims be raised or general qualifications be reduced.<sup>1</sup> But the inequality was retained. The suggestion if accepted, would have removed not only the complexity of the electoral system, but would have brought it in conformity with the constitutional provisions of Canada and South Africa where a uniform property qualification is provided for all members of the Senate.<sup>2</sup> Belgian senators were also required to possess high but uniform property qualification.<sup>3</sup> India was unique in prescribing different property qualifications for different sets of voters in various provinces.

Bryce Committee report totally rejected the idea of having a Second Chamber elected on the basis of property. The idea is really inflagrant opposition to the principle of democracy. It is true that all human beings have the same interest in good Government. It is also true that the welfare of all is equally affected, but it must also be confessed that the welfare of the wealthier classes is different from that of middle and lower classes.

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1. Reforms Office Proceedings, June, 1920, p 69.
  2. British North America and South Africa Acts, *1867-1907*
  3. T.H.Reed: Government and Politics of Belgium, p 76.

But though the trend of democracy might be against the system, the Second Chambers are constituted mainly to check the ill advised legislation of mass-leaders, which the storm of democracy brings in its fold. There is therefore, a commonly recognised necessity of constituting a second chamber on a somewhat different basis than the Lower House, whose decisions the former has to revise. In India the only different basis at the time of constituting a Second Chamber could be property which had enjoyed the privilege of guiding the nation from within the legislative councils since long. On the other hand if the council were composed of the same men as the other legislative bodies, then it could only become a supplement to the Lower House. The device of giving it a separate tone in order to make it a true revisionary body was to make it the representative of interests which would lose most from illconsidered and hasty legislation.

Other qualifications were such as past or present membership of legislative body constituted since or earlier to 1909. Even this qualification if properly analysed was an economic one. This was at least the case with the first Council of State as membership of those bodies established prior to the operation of the Act of 1919, in its turn was also based on high property qualifications.

Then came the literary qualifications such as holding a University distinction or a title conferred for literary



<sup>1</sup>merit. Compared with the vast number of voters entitled to vote on the basis of property qualifications, the number of electors coming under these categories was infinitesimally small. Take the case of Madras non-Mohammadan constituency. The total <sup>2</sup>number of electors there was 3043 in the elections of 1929-30. On the basis of literary and political awakening we may assume the total number of voters coming under this category at most 5 per cent which meant a little more than 150 out of 3043. In smaller constituencies this percentage was still lower. On the basis of this hypothesis we may rightly say that dominant elements having right to vote were either Industrial or Commercial magnets, or landed aristocracy combined with the officers of banking societies or those of local authorities <sup>who</sup> were also en-<sup>3</sup>franchised and made eligible for membership of the Council.

Females and persons under 25 years of age were excluded <sup>4</sup>both from its membership and the right ~~to~~ to vote. In an Act enacted by British Parliament in the 20th<sup>th</sup> century, the former disqualification was both abnoxious and out of date. If Council of State was intended to be a conservative organ (and it was certainly so) then it may be argued that Indian women are more conservative in outlook and action than any one else. But fortunately the restriction could be removed by the Governor <sup>5</sup>General on the recommendation of the Council. The Council of

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1. Council of State Electoral Rules VI(1)(e) and (g).
  2. Reforms Office File 133/31, July, 1931, p 10.
  3. Electoral Rules VI(1)(d & f).
  4. Ibid, III(1) (b and f);
  5. Ibid, III(1).

State passed a resolution to the effect on 18th September, 1935, and the Governor General accordingly issued the following regulation on 28th September, 1935.

"No woman who is not by reason of her sex disqualified for Registration as an electorate of the Legislative Council of a Governor's Province shall by reason only of her sex be disqualified for registration on the electoral roll of any constituency of the Council of State in that province."<sup>1</sup>

It has been customary with the Second Chamber that attainment of a comparatively higher age is provided both for the electors and those to be elected or only for the latter. As to which of the two systems is better, and has yielded better results is still a debatable question. It is perhaps to make the Second Chamber more serious in outlook and deliberative in character that "Elder Statesman" principle is applied in its composition. The Joint Reports also wanted to attract these Elders. But the rules framed under the Act provided for the same minimum age requirement both for the Legislative Assembly<sup>2</sup> and the Council of State. The result was that frequently the two Houses of the Indian Legislature exchanged their members at every election. It however benefitted the Council of State by infusing new blood and the Legislative Assembly by providing it with men of calmer judgement who had been councillors at one stage or the other.

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1. Gazette of India, Part I, September 28, 1935, p 1130.
  2. Council of State Electoral Rules III(1).



J.S.Mill suggests persons of high distinction in various fields as eligible for membership of Second Chamber.<sup>1</sup> It may be inferred from the list that what he intended was a higher age limit as compared to that prescribed for membership of Lower Chamber.

Practically we see that under the Third Republic, candidates for the French Senate were required to be at least 40 years of age.<sup>2</sup> Under the ~~present~~<sup>fourth</sup> constitution in France the minimum age of a senator must be 33 years.<sup>3</sup> In Italy senators must be 40 years of age and their electors must be at least 25 years old.<sup>4</sup> Swedish members of the First Chamber (i.e. Senate)<sup>5</sup> are assemblymen elected by voters at least 27 years of age. Danish members of the Upper Chamber are elected by elder voters of 35 years of age or more.<sup>6</sup> Irish Free State under the constitution of 1922, has provided 30 years age for voters of Seanad Eireann.<sup>7</sup> In Belgium the senators must be 40 years of age and

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1. J.S.Mill: Consideration on Representative Government, p 242.
  2. E.M.Sait: Government and Politics of France, p 131.
  3. Munro Governments of Europ, p 403.
  4. Ibid, p 664.
  5. Ibid, p 751.
  6. Ibid, p 753.
  7. Nicholas Mansergh: Irish Free State, Its Government and Politics, p 77.

are "chosen from among 21 categories" so numerous and inclusive<sup>1</sup> as to embrace almost every form of material success." The Australian Constitution does not prescribe any special age for members of its senate. Indian members of the Council of State and Australian Senators are on the same footing in this respect, though one is elected by all citizens and the other by a selected few.

Section 63E(2) of the Act required that "if an elected member of either chambers of Indian Legislature becomes a member of the other Chamber, his seat in such first mentioned Chamber shall thereupon become vacant." The relevant~~tr~~ rule framed under this section said that if a person is already a member of any legislative body constituted under the Act, he<sup>2</sup> shall not be eligible for election to the Council of State." The Rule thus contravened not only the spirit but also the letter of law as embodied in the Act. The Government of India on an enquiry from the Government of Burma ruled on 30th Aug., 1921 that Members of Burma Legislative Council cannot stand<sup>3</sup> for the Council of State unless they first resign their seats. It was because of this misinterpretation of section 63E(2) that S.Raza Ali, a liberal Muslim member of the Council moved a resolution in the House to correct the wrong done by the Electoral Rules. Government was ready to consider the proposed

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1. T.H.Reed Government of Belgium, p 76.

2. Council of State Electoral Rules III(1)(c).

3. Reforms Office File, January 1921, p 1.



amendment of the rule and so the resolution was withdrawn.<sup>1</sup> But the anomaly was never corrected.

Indeed the Principle that a person cannot be a member of more than one chamber has almost an universal bearing, the exception being the Norwegian Parliament. In the very first meeting Storting elects 1/4th from among its own members to constitute lagthing (Second Chamber). The remaining 3/4 constitute the Odelsting. In matters of Financial Legislation control of the Executive and naturalization of aliens, the two chambers thus constituted act as one body. Thus members of both chambers are members of each for certain purposes and members of only one House for other purposes. Jurists do not agree whether to class the Norwegian legislature among Unicameral or bicameral one.<sup>2</sup>

Perhaps in order to make the Council more conservative in tone and temper, the question whether rulers and subjects of Indian States should be eligible either to vote or stand as candidate for election to either Chamber of the Indian Legislature, was addressed to all local Governments on 20th March, 1920. The opinions were equally divided. Governments of U.P. Madras, Bombay, Bihar and Orissa replied in the negative while the Governments of C.P., Assam, Bengal and Punjab were ready to allow the subjects only to contest elections for either Chamber

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1. Council of State Debate (Official Report), 12th March, 1923, p 1291.

2. Leas Smith Second Chambers in Theory and Practice, pp 192-94.

of the Indian Legislature.<sup>1</sup> The Electoral Rules, therefore, provided that Rulers and subjects of Indian States could not vote nor become members of the Council unless they were eligible<sup>2</sup> for voting and standing for Provincial Legislative Councils.

The dis-qualifications were the same as are found in most constitutional documents of the modern world such as insolvency, unsoundness of mind, undergoing a punishment<sup>3</sup> ~~of~~<sup>for</sup> some criminal offence etc. etc.

#### Constituencies

Provinces were divided into constituencies of unequal size and population. Most of them were too large and unwieldy both in area and population. Take the case of U.P., East Mohammadan Constituency containing three big divisions of Fyzabad, Lucknow and Gorakhpur, the number<sup>4</sup> of electors in 1921 being 244. The largest number<sup>5</sup> of voters came from Burma. There they numbered as many as 20585. In India proper, Madras had as many as 3196<sup>6</sup> voters the number was never surpassed by any other province.

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1. Reforms Office Proceedings, August 1920, pp 7-9.
  2. Electoral Rules III(1)(a).
  3. Ibid.
  4. Reforms Office File No. F 133/31 R, July, 1931, p 10.
  5. Ibid.
  6. Ibid.



Several constituencies such as Madras Non-Mohammadan, Bombay Non-Mohammadan, and Bihar and Orrisa Non-Mohammadan were to return more than one member each. The first returning four, the second three, and the two members.<sup>1</sup> In all plural member constituencies each elector had as many votes as there were members to be elected.

Apart from three special (commerce) constituencies the rest were classified into Mohammadan and Non-Mohammadan on the basis<sup>2</sup> of communal population residing in them.

A number of electoral devices have been suggested and put into practice from time to time with a view to giving adequate representation to minorities. One of these is known as cumulative vote system. In this case, each voter is given votes equal to the number of seats to be filled in. He is allowed to caste his vote in favour of one candidate if he so likes. This means that if, say, in a four member constituency the voters of a minority party concentrate or plump their votes on one candidate only, then the party can win atleast one seat. The system was applied in Bombay Non-Mohammadan constituency which had to return three<sup>3</sup> members to the Council of State.

In addition to the above there is also the system of proportional representation, so called because it seeks to give representation to minorities in more or less exact proportion to their strength. The triumph of the theory of proportional representation is indeed remarkable. Mr. A.H. Morely remarks:

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1. Reforms Office File No. 133/31 R, July 1931, p 10.

2. Elector<sup>al</sup> Rules Schedule 1.

3. Ibid X (5)

"Before the war it was in Europe applied in a few of the smaller states. Since the war it has been generally adopted on the continent, and has been included almost without discussion in all new constitutions."<sup>1</sup> The system pre-supposes an electorate in which the average level of intelligence is fairly high and could not therefore be safely applied in elections to the Provincial Councils or the Legislative Assembly. "The electors for<sup>2</sup> these bodies" included "a large portion of illiterate persons." Madras Government in order to give concession to non-Brahmanic claims for reservation of seats applied it to their non-Mohammadan<sup>3</sup> constituency of the Council of State.

But the great defect of this system is that it encourages the growth of multiple party system. India which was already divided into communal camps, where racial, religious and professional feelings were high was not suitable for its application. Thanks are due to the local governments which did not accept it except Madras.

The President

The Joint Report had recommended that the Governor General should be the President of the Council, with power to appoint a Vice-President<sup>4</sup> who would take the Chair normally. The proposal was rejected by the Joint Select Committee and the Government of India Act on

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1. A.H. Morely: The New Democratic Constitutions of Europe, p 101.
  2. Reforms Office Proceedings, June, 1920, p 75.
  3. Ibid, p 93.
  4. Joint Report, p 132.



the analogy of the British North America Act<sup>1</sup>, provided for the appointment of the President and his Deputies by the Governor General.<sup>2</sup>

The subject as to how the President should be appointed was discussed at length in a note prepared by the Reforms Office and circulated to the Executive Councillors for their opinion. There was no statutory provision about his pay; and the omission could be construed to indicate an intention that some official member of the Council of State should be appointed to the Presidentship without special remuneration. But if the office had to carry any remuneration, the salary paid was to be subject to the vote of the Assembly under section 67A; from which circumstance, as pointed out by Sir W.S.Marris, important consequences might ensue. The Assembly could refuse a salary to any President who was not agreeable to them. It might be said that the Lord Chancellor was technically in a similar position as his salary is not borne like the speaker's on the consolidated funds, but in practice his position is secured by the fact that he is a member of Government which commands a majority in the Commons. Under the Act of 1919, however, the position was to be that if the President of the Council of State had a salary, the Assembly was able to exercise a voice in his selection and the Governor General's discretion could be impaired.

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1. British North America Act 1875 Section 34.

2. Government of India Act 1919, Section 18(2).

So far as the burden of work was concerned it seemed that it should be possible for the Presidentship to be undertaken without extra-amoluments by either a member of the Executive Council or by some other senior official. Economy and the advantage of not having the Assembly's interference in the arrangement for the Council of State also pointed in the same direction. But there were some important consideration on the other side. The Council of State was to be a real Second Chamber. It was in part directly elected; and the Government of India were taking special pains to give it strength and dignity. Its President was to preside over joint session with the Assembly. It was doubtful whether an occasional President could suffice, who could never fill a place in the Indian constitution with that of the President of the legislative Assembly or even of the Presidents of the Provincial Councils. To do so seemed to be to refuse it its full equipment, and to lay it under a disability from the very beginning. Nothing could be said before the inauguration of the Reforms and no body knew how rapidly the elective Presidents of the future could imbibe the constitutional spirit but in all probability the Parliamentary traditions could be better recorded in India by the practice and example of the Upper than those of the lower chambers.

The example of Lord Chancellor, it is true suggested that the Law Member should preside over the Council of State. But the Lord Chancellor in any case occupied a very peculiar position which could not be imitated in India, as his intervention



in debate is at least confined to the Lords. His authority and dignity in regard to the House of Lords is very different to that of the Speaker of the House of Commons. The Woolsack itself actually is not within the limits of the House and the Office can be filled by a Commoner. The Lord Chancellor cannot call a noble Lord to order, nor even decide the order in which the Lords are to speak. The President of the Council of State was in exactly the same position as the President of the Legislative Assembly in regard to his powers, and in both cases they were analogous to the power of the Speaker than to the powers of the Chancellor. The appointment of the Law Member to the Presidency, even if he could find enough time was wholly inconsistent with his appearance in the Legislative Assembly, and that fact seemed to make him unsuitable for service on select Committees. The Law Member was always prominent among Government debaters both in the Legislative Assembly and Council of State and this fact made him ~~in~~eligible to preside over one of them. In somewhat less degree the same objections applied to his colleagues of the Executive Council.

Another possibility was to appoint one of the Provincial Members. To this course general objection applied that such a temporary President could not lend the required weight to the Council of State and there was the further difficulty that during the sessions an officer was required to control members to

whom for the year he would be in official subordination. The deputation of a High Court Judge again seemed only to involve other difficulties.

Taking the broadest view of what was required seemed to be a whole time President who was to have no other function at all and no other relations with Government. It was true that this involved expense, and some additional complications as regards the settlement of legislative programmes, and also the possibility by no means remote of the interference by the Legislative Assembly. But it seemed to be the only course which was consistent with the scheme of a truly bi-cameral legislature in which the Council of State was to play its full part and not be a mere appendage to the Assembly. If this was agreed to then the choice seemed to be among ex-officials, or officials at the end of their service. No other class of candidates could so readily suggest itself. The non-official European was not likely to be available and the Indian Politician or landlord seemed, at first, for obvious reasons to be ineligible. The retired official with his pension would have been less costly than the official near retirement. It was to follow also that the salary of the President could not be fixed at a lower rate than that of the President of the Assembly, and might be similarly reduced for those portions of the year when the legislature was not in session. It was undoubtedly expensive for the actual work to be done but it was not too much to pay to get the Council of State started on the right lines.



Attention was drawn in Sir William's note that in certain circumstances the salary of the President was to be voted by the Legislative Assembly and Sir Vincent had expressed the fear that if the Assembly did not like a President there might be a trouble in this respect. Sir A.P. Muddiman pointed out in this connection that direct relations between the Council of State and the Legislative Assembly were to be infrequent. It was true that he was to preside over Joint Sittings, but there was no reason to believe that it was to be other than a rare occasion. If it was thought that the situation was likely to be difficult in this respect Sir A.P. suggested to legislate once and for all to provide for his salary. He emphasized the selection of an official President who was to have no connection with the administrative work of Government. The person to fill the post should occupy a position of impartiality sufficient to deal with high officials as well as with the non-official members. His ten years experience of the Imperial Legislative Council had brought home the fact that the control of officials was difficult than that of the non-official members and in small matters of order official members were often the greater offenders. It was this suggestion which was approved in toto by the Government of India.<sup>1</sup>

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1. Reforms Office Proceedings Nos 38-56 (File franchise A January, 1921 Simla Records). Note by Sir William S. Marris dated the 28th June, 1920 circulated by order of Chamesford and the remarks by the Executive Councillor and the Secretary of Legislative Department dated the 29th, 30th June and 1st and Fifth July, 1920, File, pp 3-6.

The first two Presidents Sir A.P.Muddiman and Sir Moncriff Smith were the senior officials of the Government of India, but the third and perhaps the last one Sir M.B.Dadabhey was the non-official and one of the elected members of the Council. The salary was fixed at Rs. 4,500/- per annum and was charged on the consolidated funds of India.<sup>1</sup>

The President was given huge powers. He could suspend a number of important Standing Orders, could allow or disallow questions and resolutions, cut short the procedure required for the passage of Bills, and above all he had a right to address the Council before putting any question to vote. This provision enabled him to take sides. What Simon Commission observed with regard to the President of the Legislative Assembly equally applies to the corresponding officer in the Council as both had the same powers. "In nothing is the contrast between the West Minister and Delhi more striking than the position assumed, and the influence exercised by the occupant of the Chair. He claims and employs powers of interference which would be quite contrary to the stricter limits of the speakership...reprimanding a Government member of the House for not attending at a debate... advising the Government not to proceed within important business when the Swarajists walked out, expressing his views of the proper operation of the so called fiscal convention and so forth!"<sup>2</sup>

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1. D.N.Banerjee: Indian Consitution and its actual working, p 52.
  2. Simon Commission Report, p 226.



The President of the Council was to preside over the Joint sittings of both Houses and could wield his powers there as freely as in the Council itself.<sup>1</sup>

It was the practice of the Governor General at the beginning of each session of the Council to appoint beside the President a panel of Chairman from among the members of the Council consisting of 4 persons.<sup>2</sup> It was also contrary to the practice generally obtaining in other dominions, where the Vice-Presidents are elected by the Chambers concerned. Even in the British House of Commons, it is not the king but the speaker who nominates a panel of Chairmen not less than three and of not more than 7<sup>3</sup> members.

The appointment by the Governor General may be justified on the basis of impartiality and the analogy may be found in the appointment by the Crown of one of the Ministers to be the Lord Chancellor of the House of Lords. The controversy whether the office of the President of the Indian Council of State was analogous to that of the Lord Chancellor at home, continued for a long time until at last it was decided to the contrary.

Each Council of State so constituted, had a life of five<sup>4</sup> years. The same duration was recommended by the Joint Report.

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1. Indian Legislative Rules, No.38.
  2. See the Official Reports of the Debates of the Council since 1921 to 1945.
  3. T.E.May: Parliamentary Practice, p 536.
  4. Government of India Act, section 21(1).

In fact it is customary that the Upper Chambers have longer life than that of the Popular Houses, though it tends to help the conservatism of voters and the House alike,

The cumulative effect of these high property and other qualifications was that the electorate of the Council of State never rose beyond 40513<sup>1</sup>. The first two Councils of 1920 and 1925 had an electorate of 17644<sup>2</sup> and 32126 respectively. This surprising increase in the number of voters was mainly due to the fluctuations in wealth.<sup>3</sup>

In actual practice the Council represented only a fraction of those voters. For in the elections of 1920 only 45 percent of the total electorate voted. In the elections held in 1925, 55 percent of the electorate exercised their votes,<sup>4</sup> while in 1930 out of a total of 40513 voters only 11104 used their right.<sup>5</sup> This shows the growing unpopularity of the Council during its last years, even among the landed classes. The reason may be the spread of extreme nationalist sentiments of the Congress.

Andhra Conference Standing Committee actually warned the Government saying that "To constitute an Upper Chamber with an electorate of 2000 wealthy men in a Presidency with an area of 42 millions will be ill suited both to the needs of the country

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1. Reforms Office File No. 133/31 R, July, 1931, p 10.  
2&3. Simon Commission Report, p 222.

4. Ibid, p 223.

5. Reforms Office File F 133/31 R, July, 1934, p 10.



and the ideals of representation.<sup>1</sup> With a view to remedy the defect, the Madras Provincial Congress Committee passed a resolution recommending that the electoral rules should be so framed as to yield an electorate of no less than 5,000 in the larger provinces.<sup>2</sup> Punjab Congress Committee went a step further. It recommended specific qualifications which, if accepted by the Government had undoubtedly doubled the electorate and made the Council as influential and powerful as the Legislative Assembly which was really undesirable. These were as follows:

"The votes of the Council be given to

- (a) Landholders and crown tenants of land of Rs. 750/- per annum or more.
- (b) Persons in receipt of an assignments of land revenue of Rs. 750/- or more.
- (c) Payers of the Incometax who have an income of Rs 10000/- or more.
- (d) All present and past non-official members of the Punjab Legislative Council
- (e) Persons ordinarily resident in the Punjab, to hold the degree of Doctor or that of Master of Surgery of the Punjab or some other recognised university within or out of India.
- (f) University Professors of Punjab.
- (g) All Presidents and Principals of all colleges affiliated to the Punjab University and teaching up to degree standard.
- (h) All Molvi Fazils, Shastries and Gyanies of Punjab University.

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1. 'Hindu' dated 23rd. May, 1920.

2. Ibid, dated 22nd Feb., 1920.

- (i) All advocates, Vakils and Pleaders who have an income of atleast 5,000/- per annum.
- (j) All recognised Medical Practitioners, all Hakims, Tabibs, Veds and all engineers who have an income of atleast Rs. 5,000/. per annum.
- (k) All managing directors, Presidents, Secretaries of Registered Companies with incometax on an income of atleast one lakh of rupees per annum.
- (l) Two representatives selected by each Company which pays an incometax on Rs. 50,000/- per annum.
- (m) Two representatives selected by the Society registered under Act XXI of 1860, which has an annual income of Rs 2,000/- or more. (1)

Considering the general poverty of the masses and the standard of literacy in India, the above qualifications were considerably high to give a selective characters to the Council. But the Government of India was not ready to acquiesce in those terms because (1) it was middle class intelligentsia which had the control over the elections of the Legislative Assembly and if it were also enfranchised for the Council, the distinctive character of the latter body as a revisionary chamber would have been lost. (2) They wanted to make the Council a Chamber of Elder Statesmen. Such men could only be found in a class which was enfranchised for Provincial Legislatures much earlier than the creation of new electorate in 1920.

Smaller number of voters can be more easily bribed by the candidates. Though schedule 4 of the Electoral Rules enumerated acts of bribery in the form of entertainment, employments for reward, gifts; undue influence, personation, threats of injury,

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1. Hindustan Times, dated 17th April, 1920.



Publication of false statements and payment for conveyance of voters as corrupt practices for purposes of elections. Yet a wellknown author observes: "in spite of these stringent laws to restrain improper conduct of elections, elections held under the reforms have not been altogether free from corruption. There have been cases of bribery and undue influence. Many members of the land owning class contesting seats in general constituencies in rural areas, allowed their paid servants to conduct electoral campaigns in their behalf in such a manner as very often interfered with the free exercise of electoral rights by their constituency." <sup>1</sup> The emphasis in the Statement is on the conduct of land owning class which formed the main element of the electorate and members of the Council. But an examination of the Gazette of India shows that the number of petitions filed against the members of council was the least as compared with that of the Legislative Assembly or Local Legislatures. The total number of cases filed against the Councillors during the whole life of the Council of State was 50 while that against the members of Legislative Assembly <sup>2</sup> was 125 and those against the local Legislators was 675.

As a result of restricted franchise and direct elections, Zamindars came in large numbers to occupy majority of elective

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1. D.N.Banerjee: Indian Constitution and its Actual working, pp 188-189.

2. Gazette of India 1921 to 1945 (Part I).

seats. This made the Council a conservative force naturally supporting the existing political and social structure of the country. We are supported in this contention by official and non-official authorities alike. Government of India stated about Zamindars, after nine years of the actual introduction of Reforms that "On the whole they remain at present a conservative force."<sup>1</sup> And about the Council of State of which they were the major electors and occupied majority of seats, the Simon Commission remarked: "The Council of State represents more conservative elements in the country and in particular sections of society which have most to lose by hasty and ill considered legislation."<sup>2</sup> Mr. V.G.Kale writing on the basis of his personal experience of its membership observed: "The Council of State represents an important section of tax payers."<sup>3</sup>

In the view of the Nehru Committee there was 'No justification whatsoever for a Second Chamber consisting of obscurantists and peoples belonging to special classes,' whose chief aim was to protect their own interest and obstruct all liberal measures."<sup>4</sup> These words were written at the fury of the moment when the political antagonism between the extremists and the Government of India and between the former and cooperators was at its height. The authors did not impartially scrutinized the working of an institution which was truly full of cooperationists belonging to vested interests but of liberal disposition.

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1. Government of India's despatch on proposals for constitutional reforms (1930), p 4. V.Smith: Indian Constitutional Reforms, p 100.
  2. Simon Report, Vol.I (Survey), p 225.
  3. V.G.Kale: Indian Administration, p 235.
  4. Nehru Report, p 94.



POWERS AND PRIVILEGES

Power over  
its own  
procedure

The senates of Self Governing Dominions and most other Second Chambers have power to make rules and Standing Orders for the conduct of their business . In India the Govt. of India Act Provided that rules and Standing Orders were to be made by the Governor General in Council subject to the approval of the Secretary of State.<sup>1</sup>

The freedom of speech, says Sir T. Erskim May" is a privilege essential to every free Council or Legislature.<sup>2</sup>" J.W. Burgess elaborating the idea writes" the fullest and most complete ventilation of every plain object and purpose is necessary to wise and beneficial legislation. This can never be secured if the members are under the restraints imposed by the law of slander and libel upon private character. There is no doubt that this privilege may be grossly abused, since every word used in the debate, and frequently something more, is now repeated to the public; but the danger to general welfare from its curtailment is far greater than that to individuals from its exercise."<sup>3</sup> The Government of India Act itself provided for freedom of speech both in the Legislative Assembly and the Council of State. But

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1. Government of India Act. Sections 23 & 24.

2. T.E. May: Parliamentary Practice p 96

3. J.W. Burgess: Political Science and Constitutional Law, Vol.II,p 122.

the two Houses differed with each other in the manner they exercised these privileges due to their respective temperament and attitude towards the Government.

An Act was passed by the Indian Legislature in 1925 which contained the recommendation of the Reforms Inquiry Committee in a slightly modified form. It is known as Legislative Members<sup>1</sup> Exemption Act of 1925. According to it Members of Legislative Bodies constituted under the Government of India Act were exempt from liability to serve as Jurors or Assessors. Secondly no person could be arrested or put into custody under Civil Process

- (a) If he was a member of a Legislative Body constituted under the Government of India Act, during the continuance of any meeting of such a body.
- (b) If he was a member of any Committee of such a body, during the continuance of any meeting of such Committee.
- (c) If he was a member of either Chamber of the Indian Legislature during the continuance of a Joint Sitting of the Chambers, or of a meeting of a Conference or Joint Committee of which he was a member.
- (d) and during the 14 days before and after such meeting or sitting.

The designation of Hon'ble as recommended by the Joint Report was enjoyed by each member of the Council of State during<sup>2</sup> the tenure of office.

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1. Joint Report, p 132. Act No. XXIII of 1925.  
2. Joint Report, p 132.



Members were not paid any salary. The Governor General in Council had provided for daily and travelling allowances to persons who were required to leave their official Headquarters or usual places of residence for the purpose of attending meetings of the Council.<sup>1</sup> The Daily Allowance was also paid for 7 days before and seven days after the session. This allowance<sup>2</sup> was later reduced to 3 days before and after the session.

Sir P.S.Siwa Swami Aiyer approving the above practice wrote "The payment of members throughout the year not merely involves a considerable addition to public expenditure, but will have the effect of encouraging the growth of a class of politicians who would look to a seat in the Legislature as a means of livelihood. I would therefore prefer the continuance of present system of travelling allowances."<sup>3</sup> He unfortunately forgot that in an era of democracy, the Legislative Mandate should not be a luxury reserved for the well to do and therefore in order that it may be accesible to all it must<sup>be</sup> a salaried position. Secondly, if the Government does not pay to members of Legislature, there is every possibility that they might be paid secretly by private means and thereby the integrity of their Political Character should suffer. Their salary must therefore come from Public

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1. Legislative Department Proceedings, No 1, January, 1921.
  2. Council of State Debate - See the Chambers Working.
  3. Sir P.S.Siwaswami Aiyer: Indian Constitutional Problem, p 173.

<sup>1</sup>  
Funds." The system was also contrary to the practice obtaining in the British House of Commons and in other Dominions.

The first hour of every meeting was available for asking  
<sup>2</sup>  
questions for the purpose of information. Supplementary questions  
<sup>3</sup>  
were allowed.

Resolutions could be moved by any member. If passed these were to be forwarded to the Governor General in Council. They were only advisory in character, and in no way binding upon the  
<sup>4</sup>  
Government. No resolutions could be moved affecting the relations of the Governor General or His Majesty's Government with Indian Princes or foreign States, or affecting any matter which had been under the adjudication of a Court of Law within his Majesty's Dominions, the decision of the Governor General on the point whether a resolution was or was not within the restrictions  
<sup>5</sup>  
imposed was to be final. The Governor General could within the period of notice disallow any resolution which in his opinion was detrimental to public interest or related to a matter which  
<sup>6</sup>  
was not primarily the concern of the Governor General in Council.

Adjournment Motions for the purpose of discussing a definite matter of urgent public importance could be moved with the con-  
<sup>7</sup>  
sent of the Governor General. In the British House of Commons

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1. Joseph Barthelmy; The Government of France, p 38.
  2. Standing Order, 9.
  3. Indian Legislative Rule 10.
  4. Ibid, 24.
  5. Indian Legislative Rule 23.
  6. Ibid, 22.
  7. Ibid 98.



the Speaker may decline to submit such a motion to the House, if in his opinion the subject to be brought forward is not definite, urgent or of public importance.<sup>1</sup> Such a power was also vested in the President of the Council. Leave to introduce such motions could not be granted unless the mover had the support of at least 15 members.<sup>2</sup>

15 members of the Council formed a quorum for formal meetings.<sup>3</sup> The Secretary of Council had to prepare a report of the proceedings and publish it in the manner directed by the Governor General.<sup>4</sup>

Members were to stand in their places while speaking, and had to address the Chair.<sup>5</sup>

The Governor General and his Executive Councillors could attend and address the Council.<sup>6</sup> It was contrary to the constitutional practice of England, where no member of one House can speak in the other in his capacity as a Minister. In the Dominions it is the general practice that Ministers can speak in either House, on request by the latter or on their own initiative. But in India neither Chamber could demand their presence, although the council of State tried to do so.

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1. T.E.May: Parliamentary Practice, p 227.
  2. Standing Orders of the Council of State, No. 22.
  3. Ibid, 24.
  4. Ibid, 72.
  5. Ibid, 26.
  6. Government of India Act 1919 Section 22(4).

The Governor General could desolve either Chamber of Indian Legislature,<sup>1</sup> even earlier than the normal statutory period. Practically the Council was never dissolved<sup>2</sup> in this way. He could likewise expend its life in special circumstances. This power was however applied during the life of the fourth Council of State which was formed in 1937 and continued working till 1945. In case of dissolution<sup>3</sup> the Governor General had to appoint a date not more than six months after the dissolution and with the sanction of Secretary of State not more than nine months after such dissolution<sup>2</sup> for the next session of the Council. He could prorogue any session of the Council and decide the date and place<sup>3</sup> for its meetings.

Passage of  
Bills.

As usual, every Bill in order to become an Act had to pass through three stages in each Chamber. Amendments might be moved in the Second stage when the motion for consideration was carried in the Chamber. The Bills after passing through first stage, could be entrusted to Select Committee or to Joint Select Committees for examination and report, or could be circulated for eliciting public

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1. Government of India Act Section 21 (1)
  2. Government of India Act Section 21
  3. Ibid, sections 18 and 21.



opinion, whichever course the House preferred.<sup>1</sup> Standing Orders were so framed as to give precedence to Government Business. Bills already introduced at the close of one session were carried over to the pending list of the next session and were to begin their progress again at the point they had already reached. Thus the Indian practice avoided that unfortunate necessity of the 'slaughter of the innocents,' which is generally the effect of<sup>2</sup> the prorogation of a session of parliament in England."

Powers of  
Legislation

Indian Legislature was not a sovereign body nor was the Government responsible to it. The control on the Executive which is one of the primary functions of modern legislatures was completely out of question.

Further limitations were imposed on the powers of Indian Legislature. Council of State being a part thereof was likewise restricted in its competence. In addition to measures referred to in sub-section 2 of Section 67 of the Principal Act (1915) as requiring previous sanction of the Governor General, it was not lawful without obtaining such previous sanction to introduce at any meeting of either Chamber any measure:

- (a) Regulating any provincial subject which had not been declared by rules under the Principal Act to be subject to Legislation by the Indian Legislature. The provision was in keeping with the principle of the Division of Functions, which requires clear cut division of powers between the Centre and Units e.g. in Canada and U.S.

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1. Indian Legislative Rules 28,30,48 and 37.
  2. D.N.Banerjee: Indian Constitution and its Actual Working, p 232.

- (b) Repealing or amending any Act of a local legislature.
- (c) Repealing or amending any Act or ordinance made by the Governor General.

Wherein either Chamber of the Indian Legislature any bill had been introduced or was proposed to be introduced, or any amendment to a Bill was moved, or proposed to be moved, the Governor General could certify that the Bill or any clause of it, or any amendment, affects the safety and tranquility of British India, or any part thereof, and could direct that no proceedings or no further proceedings shall be taken by the Chamber in relations to the Bill, clause or amendment, and effect shall be given to such direction.<sup>1</sup>

This provision had no parallel in any constitution of a free country. Indeed it was a mark of subjection stamped on both Chambers of the Indian Legislature. No external authority can stop the proceedings of the Legislative Body. If the law enacted is contrary to the constitution, the most that a supreme or Federal Court can do, is to declare the law *ultravires*. In India the Governor General had the power of assenting, refusing the assent returning the bill for reconsideration or reserving the Bill for His Majesty's pleasure. In the presence of such provisions the power given to the Governor General for stopping the proceedings of the Houses was unreasonable and even insulting.

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1. Government of India Act, Section 27.



These were however the general restrictions applying to both Chambers of the Indian Legislature. Now we come to the question of the powers of the Council of State particularly, in the field of ordinary legislation and this involves its relationship with the other House.

"Most of the Second Chambers are either too weak or too <sup>1</sup> strong". Any claim to coordinate powers and still more to superiority of power in any field would inevitably lead to a confusion, deadlock and uncertainty in Government. The case of the British House of Lords when it possessed co-equal powers with the Commons will suffice to illustrate the point. Being an overwhelmingly conservative body it either rejected all reform measures or thrust upon the popular branch a compromise, or yielded to the personal persuasions of the king and his threats to create more years to swamp the opposition. The latter course was adopted in 1832. After 16 new peers were created to assist in the progress of the measure, the continued opposition of Lords was at length overcome by private persuasion of the King and the knowledge that he had consented to his ministerial advice for creating sufficient number of peers to ensure a <sup>2</sup> majority. In August 1869 Mr. Gladstone <sup>aimed</sup> ~~attended~~ from the queen the creation of 12 liberal Peers, to present effectively before

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1. Sidney Low: The Governance of England, Introduction, p XIII.
  2. Quoted by T.E.May: Constitutional History, I, p 312.

the Lord's<sup>1</sup> Irish Church Disestablishment Bill. In 1884, they were asked to pass another Reform Measures and the collision between them and Commons was "narrowly avoided" with the aid of<sup>2</sup> the Queen. They displayed their powers more effectively on<sup>3</sup> Parish Councils Bill on which a compromise was reached. Employers liability Bill was abandoned by Mr. Gladstone due to<sup>4</sup> their effective opposition.

The deadlock on financial matters were still more serious and it was on this issue that in 1911, the Parliament Act was passed to bring down the Second Chamber to a subordinate position.<sup>5</sup> These instances will suffice to show that the theory of equal powers has led to conflicts and resulted in the definite subordination of one Chamber by the other.

Cockburn, one of the architects of Australian Federation, during debate on the powers and position of senate observed, "It has been contended that the senate should have authority coordinate with that of the Popular Assembly in order to act as a sort of check upon hasty legislation something to stand in the way of the will of the people...Federation cannot exist, coordinate Houses cannot exist and work together unless they<sup>6</sup> both recognise and yield to the sovereignty of the people".

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1. Morley: Life of Gladstone, p 130.
  2. The constitution of England from Queen Victoria to George VI by A.B.Keith, pp 391, 92.
  - 3,4. Ibid, p 398.
  5. Parliament Act 1911 vide English Constitutional History by Taswell Langmead, pp 618-20.
  6. Crisp: The Parliamentary Government of the Commonwealth of Australia, p 179.



French Council of the Republic under the constitution of the 4th Republic <sup>was</sup> ~~is~~ given very limited powers, much narrower in scope as compared to what were possessed by the senate under the Third Republic. Indeed its powers were "less extensive than the authority now exercised by the House of Lords."<sup>1</sup> The Belgian constitution declares that the legislative powers is to be exercised collectively by the king, the Chamber of Representatives and the Senate. "In fact the position of the senate is distinctly subordinate..."<sup>2</sup> In the Irish Free State the powers of senate are limited not merely in fact but also in law<sup>3</sup> than those of the Dail. The South African Act of 1909 drafted on the basis of practical experience in the Mother Country and Dominions, provides for joint sittings within the same session, in cases of disagreement. In such meetings the Lower Chamber has a decided preponderance.<sup>4</sup> The provision actually weakens the position of the senate.<sup>5</sup> The practical weakness of the senate in Canada is proverbial. Nomination of members for life combined with the fear of being swamped by fresh nominations has contributed to its weakness. Government of Ireland Act of 1920 which is still valid for northern Ireland provides for a very weak Second Chamber. The Powers of the senate there are those powers of the Lords which are left to them after the<sup>6</sup> passage of the Act of 1911.

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1. Munro: The Governments of Europe, p 358.
  2. T.H.Reed: Government and Politics of Belgium, p 80.
  3. Mansergh: The Irish Free State, Its Government and Politics, p 94.
  4. S.Africa Act Section 63.
  5. Marriot: Mechanism of the Modern State, p 417.
  6. Munro: European Governments and Politics, p 379.

The part which the Reichsrat played in ordinary legislation, was in the main to make suggestions and recommendations, to impart information, to approve, to warn, to check and to delay.<sup>1</sup> The Legislative Authority under the Bonn constitution is enjoyed by the two chambers, but the veto of the Bundesrat<sup>2</sup> can be overridden by a similar majority in the Bundestag.

The Polish constitution of 1921 permitted the senate to consider every bill passed by the Sejm within a period of 30 days from its passage in the latter.<sup>3</sup>

The Egyptian Organic Law of 1883 gave the legislative Council merely debatory and consultative powers. "It had no power of absolute veto."<sup>4</sup> In practice however the senate of Iraq has more or less the same position. "It cannot initiate<sup>5</sup> legislation, though it sought to obtain the right in 1926."

The exponent of equal powers may point out the Scandinavian practice where coordinate powers of the two chambers have never caused any constitutional deadlock. The justification for the successful working of the system there is, that both chambers derive their authority from an equally direct source of election. The same method of election which produces given results in

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1. Oppenheimer: The Constitution of German Republic, p 110.
  2. Munro: The Governments of Europe, p 575.
  3. M.W.Graham: New Governments of Central Europe, p 470.
  4. Constitutional Development in the Islamic World by R.C. Ghosh, pp67, 252.
  5. ~~W.A. Smith~~ Lees-Smith: Second Chambers in theory and practice, pp 192, 194.



one, secure the same results in the other Chamber. They act for certain purposes (as for example the election of Executive, Financial Legislation, and naturalization of aliens) as practically one Chamber and for other more ordinary purposes as two Chambers.<sup>1</sup> In Norway and Belgium the party position in both chambers remains the same.<sup>2</sup> In the Swiss Confederation, where the Council of States is constituted on a distinct basis, Mr. Adams observes, "we cannot however, help thinking that in practice the National Council has more influence than the Council of States...When the two chambers unite as one body...that chamber contains more than three times as many members as the Council of States."<sup>3</sup><sup>4</sup>

Contrary to the practice obtaining in so many countries, against all available historical evidence of the disputes resulting in deadlocks, the Indian Council of State being neither as broadly based as those of Switzerland Sweden, Norway and Belgium in which Upper Chambers are either chosen by the people or by the Provincial or Central Legislature, was given coordinate authority in the field of ordinary legislation and overriding powers to pass certified legislation. But in spite of co-equal powers (except on occasions when Government decided to make it act otherwise) the Council of State worked quite satisfactorily as the Second and secondary Chamber with regard to measures connected particularly with social and labour reforms.

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1. Lees-Smith: Second Chambers in theory and practice, pp 192,194.

2. Ibid.

3. T.H.Reed: Government and Politics of Belgium, p 80.

4. Adams: Swiss Confederation, p 52.

Private members Bills could be initiated in either Chamber while Government Bills were ordinarily introduced and carried through the usual stages in the Legislative Assembly first. These were then to go to the Council and if there amended in any way which the Assembly was unwilling to accept the measures could be submitted to the Joint Sitting after six months of their passage in the originating chamber. Unlike ~~in~~ South Africa, where the Governor General may submit the controvercial measure to a joint sitting in the same session, the Governor General of India could do so only after six months of the actual start of the controversy. Thus the Council was given a specific suspensory veto, in matters of ordinary as against essential legislation.

But if the amendments thus made by the Council were such as to be <sup>s</sup>essential in view of the Government, the Governor General could certify that the amendments were essential to the interests of peace, order or good Government and so the Bill could become Law; secondly if the Assembly refused leave to introduce a Bill, the Governor General could certify it in the same manner and after being certified the Council could not make amendments and had either to pass or reject the Bill altogether. Being always conservative, self devided and containing substantial nominated element, it always passed and never rejected such certified measures. These were the recommendations of the Joint Report which were made part and parcel of



<sup>1</sup>  
the Act.

The Report also provided for another possibility, Cases might occur when the consideration of a measure by both chambers was to take too long, if the emergency called for the measures was to be met. In such cases it was proposed to be opened to Government to certify and introduce the Bill in the Council alone and to report the fact of its passage to the Legislative Assembly.<sup>2</sup> But Joint Select Committee rejected this plan and the Government of India Act provided for promulgation of ordinances by the Governor General instead.

The non-certified legislation was to pass through both chambers. "For if the Government was assured that projects of social reforms had the support of the Indian elements in two chambers, so differently constituted it would have the less reason for offering any obstacle to their progress."<sup>3</sup> Thus the decidedly conservative Body was given equal powers in the passage of measures of social reforms.

Strong objections were raised to the procedure outlined in the Act on the basis of Joint Report for certified legislation. The substance of all criticism was that by so getting

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1. Joint Report, pp 132-133 and Government of India Act, 1915, Section 76 (c)
  2. Joint Report, p
  3. Ibid, p 132-133.

the measure passed by the Council of State alone, the Government would give it the false garb of popular support. Secondly it might tend to enhance friction and jealousy between the two chambers. It would make the Government more reactionary by its perpetual dependence and support of a conservative chamber. But the Government of India stood firm and the Act as passed by the British Parliament recognised virtually the claims.<sup>1</sup>

It was provided in the act that (a) where the either chamber of Indian Legislature refused leave to introduce or fail to pass a bill in a form recommended by the Governor General, the Governor General could certify that the passage of the Bill was essential to the safety, tranquillity or the interest of British India or any part thereof, and thereupon...

- (a) "If the Bill has already been passed by the other Chamber, the Bill shall on signature by the Governor General, notwithstanding it has been consented to by both chambers, forthwith become an Act of Indian Legislature in the form of the Bill as originally introduced in the Indian Legislature or (as the case may be) in the form recommended by the Governor General.
- (b) If the Bill has not already been passed, the Bill shall be laid before the other chamber and if consented to by that chamber in the form recommended by the Governor General, shall become an Act as aforesaid, or if not so consented to, on signatures by the Governor General, become an Act as aforesaid."<sup>2</sup>

As proved by the practical operation of the Act, such fears of failure to pass or refusal to the introduction of the Bill was with the Legislative Assembly and not with the conservative Council of State. The only restriction upon such

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1. Minute of dissent of Sir Sankaran Nair, vide Government of India's Fifth Despatch on Franchise, pp 17-19.

2. Government of India Act, 1919, Section 26.



unicameral legislation was that it had to receive His Majesty's assent. (In the case of emergency the provision could be waived. Conservative in its composition, the Council was given thus two-fold power of rejecting and thwarting measures of social reforms passed by the Assembly, and passing certified legislation over the head of popular representatives. That the Council of State exercised the former power less frequently than the latter is really creditable for a second chamber composed of conservative planks of Society. It is particularly this side of the picture which is generally omitted by its critics.

Next come the powers in the Monetary field. Beside the exclusive right of initiating Money Bills a privilege reserved for the House of Commons, and admitted by the Lords in the short Parliament of 1640, the Commons also maintained that Money Bills should not be amended by the Lords. In 1671, they successfully disputed the right of the Upper Chamber to reduce the amount of an imposition, and since then, the Lords have tacitly acquiesced in the contention. Later, Palmerston in 1860, moved a resolution denying the Lords the power of decreasing or amending the aids and supplies. This resolution was passed by Common<sup>1</sup> on 6th of July, 1860.

But the dispute did not finally stoppe until by a constitutional innovation the House of Lords on November 30, 1909, decided to reject the Budget. The electoral contest which followed was keen; the Premier denounced the claims of the Lords as unconstitutional because (a) they deemed to control taxation,

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1. May: Constitutional History. II. pp 104-112.

(b) they asserted to compel a dissolution and (c) thereby usurping the right of making and unmaking the Executive Government. The Parliament Bill was introduced and Lords having knowledge that some 400 Peers might be created with a stroke of pen, and that they could not recover from such a blow to their "traditions and prestige", yielded to pass the Bill.<sup>1</sup> The Act, thus passed in 1911 definitely subjects the Lords to the Commons, in matters of finance. In respect of the Money Bill, the assent of the Crown ~~may~~ may be given if the Lords do not pass it within one month of its reception, provided the Bill is sent to them at least one month before the end of the session.

Section 53<sup>of</sup> Australian Constitution explicitly says that proposed laws appropriating revenues or moneys or imposing taxation cannot originate in the senate. Nor the senate may amend such proposed laws so as to increase the burden or charges upon the people. But the senate can return a proposed law which it cannot so amend, with a request by message to omit or insert certain provisions. If the senate fails to acquiesce in the proposals of the House the same provision holds good as is applicable to deadlocks in ordinary legislation. Thus double dissolution and joint sittings in which the Chamber has a decided majority of votes and the fear of the senators of losing their

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1. Nicholas Mansergh, p 96.



seats in case of such dissolution, virtually keeps them in constant awe. Secondly "whereas after a general election, the majority of The House of Representatives has a single mandate for its declared policy, only half of the senate has been to the people. Consequently a senate majority partly made up of senators who have already served half their term can claim no valid and upto date mandate to obstruct the measures of a new House of Representatives' majority."<sup>1</sup>

The South Africa Act 1909 provides for a Joint Sitting to resolve the deadlocks within the same session. The Lower House has more votes and will invariably win. The procedure may be followed in all kinds of crisis including those on money matters. Thus the senate there has also a subordinate position in financial<sup>2</sup> legislation.

The Dail of Irish Free State has the exclusive power to deal with money Bills. The Bills are sent to the senate for its recommendation which must be made within a period of 21 days. These recommendations may or may not be accepted wholly<sup>3</sup> or in part. The role of the senate is therefore purely advisory. Government of Ireland Act of 1920 provides in the case of Money Bills that these may be rejected but may not be amended by the senate. If, however, the House of Commons refused to acquiesce, a joint Sitting settles the fate of the measure in the same

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1. Crisp: The Parliamentary Government of the Commonwealth of Australia, p 181.
  2. South Africa Act Sections 60 and 63.
  3. Nicholas Mansergh, p 96.

session. This device makes the decision of the Lower House to prevail due to its numerical majority.<sup>1</sup>

During the third Republican era in France, the first conflict over the finance measure arose in 1876 when the senate restored certain credits previously reduced by the Chamber. In subsequent years the Chamber resolutely denied the pretensions of the senate, developing thus the constitutional "doctrine of the last word" which meant that the senate was bound to give way when the Chamber had twice acted upon the Budget.<sup>2</sup> Under the present constitution, the Council of Republic can hold up the budget like other measures for a maximum of two months period. After this the Bill automatically becomes law. The Council has the power to propose amendments which must be considered by the Assembly. The latter body may reject or accept them by simple majority.<sup>3</sup>

The Two Chambers of Norwegian Parliament act together in certain cases. Both in Switzerland and Sweden, the two Chambers have substantially the same powers.<sup>4</sup> This arrangement might seem unworkable but it has proved successful firstly because the same coalition of parties is usually able to command a majority in both Houses. Moreover the Cabinet who initiates the budget is elected by both Chambers jointly. In Sweden

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1. Ogg and Zink: European Governments and Politics, p 138.
  2. Sait: Government and Politics in France, p 138.
  3. Munro: The Governments of Europe, pp 404, 405.
  4. Rappard: The Government of Switzerland, p 61.



deadlocks are solved by joint sittings.<sup>1</sup>

The inferiority of Belgium senate like that of Australia is not owing to any formal limitation of its powers. The only restriction is that the financial measures are initiated in the Lower Chamber. Even this limitation was removed in 1921. The system works satisfactorily because of the same complexion of party colours in both Chambers. Besides this the senate may be sooner dissolved if it resists the popular House<sup>2</sup> too long.

According to the Bonn Constitution the German Bundesrat enjoys only suspensory veto in all matters including budgetary provisions.<sup>3</sup>

Contrary to the universal practice of giving exclusive or merely exclusive powers to the Lower Chamber over financial matters, the Joint Report recommended to subject the fiscal legislation to the exclusive authority of the Governor General. But the Act divided the fiscal measures into three categories (i) Non-voteable by any Chamber, (ii) Voteable by the Assembly and (iii) Voteable by both Chambers. The first category included (a) interests and sinking fund charges on loans, (b) Expenditure of which the amount had been prescribed, by or under any law, (b) salaries and pensions <sup>of persons</sup> appointed by or with the approval of His Majesty or by the Secretary of State in Council.

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1. Munro: The Governments of Europe, p 751.

2. T.H.Reed: Government and Politics of Belgium, p 81.

3. Munro: The Governments of Europe, p 575.

(d) Salaries of Chief Commissioners and Judicial Commissioners and (e) expenditure classified by the order of the Governor General in Council as Political, ecclesiastical and defence. The question whether an item related or not to these heads, was to be decided by the Governor General and his decisions were unchallengeable.<sup>1</sup>

The second category included the proposals of the Governor General in Council for the appropriation of Revenue or Money relating to heads of expenditure not specified above, were to be submitted to the vote of the legislative Assembly in the form of demands for grants. The Assembly could assent or refuse to assent them or could reduce any such demand.<sup>2</sup>

The Act did not expressly provide for voting by the Council on these demands. It was also silent on these being discussed in the Council, though it required them to be laid before the Council.

Supply had to be voted by both Chambers. This gave the Council coordinate authority with the Assembly in the passage of Finance Bills. Like ordinary legislation, the Finance Bills could be certified by the Governor General on its rejection by the Assembly. The Council had the Power to pass it in the certified form. Indeed the supply is the basic requirement of

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1. Government of India Act, 1919, Section 25 (3).

2. Ibid, Section 25 (4).



the Government and the demands for grant are made according to the estimated income of the State. The provision actually made the Council a body invited to register the decrees of the Government over certified Bills.

By Standing Order 70, the Council was forbidden to discuss the budget. As we have pointed out there was nothing in the Act to prevent the Council of State from discussing it without right to vote. The Standing Order therefore was extra constitutional if not ultravires. The Council immediately noted the flaw. This prohibitory order could be amended by the Council<sup>1</sup> with the approval of the Governor General, and the Council passed a resolution to get the power of discussing the Budget. It was not possible for the Governor General to refuse his sanction to the Council's resolution, for to do so would be to insist on giving the legislative Assembly a constitutional position neither warranted by law nor established by convention. On the other hand the Assembly was jealous of its financial powers and could not easily agree to any extension of powers of the Council of State. Any attempt in that direction would bring the Government into conflict with that Chamber. Mr. E.M. Whyte warned the Government on behalf of the legislative Assembly that if the said Standing Order were amended in the sense suggested by the Council, the Assembly would use any weapon within

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1. Government of India Act (1916) Section 67.

reach to harass the Government until the most explicit constitutional limitations of financial powers of the Council were laid down either by statute or otherwise.<sup>1</sup> Mr. V.G.Kaley moved and the Council of State passed the following resolution on 27th September, 1921.

That for Standing Order 70 of the Council of State Standing Orders, the following shall be substituted:

"70(1) there shall be no discussion of the Budget on the day on which it is presented to the Council of State.  
(2) On a day subsequent to the day on which the Budget is presented, and for such time as the Governor General may allot for this purpose, the Council shall be at liberty to discuss the Budget as a whole or any question of Principle involved therein but no motion shall be moved, nor shall the Budget be submitted to the vote of the Council.  
(3) The Finance Member shall have a general right of reply at the end of the discussion.  
(4) The President may, if he thinks fit, prescribe a time limit for speeches." 2

It is interesting to note that the resolution was adopted without discussion. The Government unhesitatingly conceded the request as it was unwilling to annoy the Council. The flaw was in the Act itself. The Council beside having the power to pass Finance Bill thus secured the right of influencing the Budget Proposals of the Government, and above all, to pollute the influence of political criticism of the popular representatives in the Assembly.

The Act provided three means to solve the differences between the two Chambers: (1) Joint Committees, (2) Joint

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1. Proceedings of the Legislative Department, No. 1 & II, May, 1922, pp 1-4.
  2. Council of State Debates(Official Report 1921)Vol.II,27th September, 1921, p 463.



Conferences and (3) Joint Sittings. Smaller differences could be resolved by employing the first of the three methods. Second and Third courses never came into practice. Joint Sittings could be convened by the Governor General at his discretion only after six months of the passage of the controversial bill by the initiating Chamber. Measures of Social Reforms are generally initiated in popular Houses. Indian Council of State being the Upper Chamber was not expected to march in this direction. On the other hand as justly expected, it (Legislative Assembly) successfully passed such legislation but the Council of State being representative of vested interests could thwart these measures. The Governor General being a representative of the Foreign Government and depending for the perpetuation of his Rule on the support of the influential members of the Council, could share the views of the latter and not those of the more progressive Legislative Assembly. He was not therefore expected to call a Joint Sitting to solve differences in favour of the Assembly, as in such a sitting the Assembly was certainly to have a dominating position due to its numerical preponderance. Nor the Governor General was obliged to call such a sitting. So far as the Government Legislation was concerned, the Governor General could secure its passage through certification even if the Assembly was unwilling to pass it. So far as the private members Bill were concerned, they were to pass through both Chambers. Measures

of social reform, if rejected or amended by the Council in a form unacceptable to the Assembly, these were to be submitted then to a Joint Sitting in order to become Laws. The Joint Sitting could be convened after six months and that even depended on the discretion of the Governor General. The Governor General was neither so much progressive nor interested in Social Reforms. The Joint Sittings were never convened for any such purpose.

Having examined its constitution and powers no body should hesitate to say that the Council of State was left to chose for itself the role it wanted to play in the bicameral arrangement. It could either become a simple revising body or an effective Second Chamber by the frequent use of enormous powers entrusted to it by the Constitution. Much depended also on the attitude of a Government which had secured for itself an effective position in the Council. That it used those powers with moderation and due discrimination or blindly followed the dictates of the Lower Chamber or, those of the Government of India will be examined in the next chapter.

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CHAPTER III

WORKING OF THE COUNCIL OF  
STATE

The Council of State which met for the first time in 1921 was based on an electorate not exceeding than 17,644 in the whole of India, and this number increased to 32,126<sup>1</sup> in 1925. The third elections saw another increase in the total number of electors and the figure reached 40513.<sup>2</sup> Of these two later numbers, Burma alone provided no less than 15,555 and 20654<sup>3</sup> voters respectively. The figures were reduced further in 1936, primarily because of the separation of Burma from India and the consequent exclusion of its representatives from the Indian Legislature.

The comparatively small electorate showed a progressively increased readiness to go to the polls. How far it was due to a genuine advance in Political interest or other extraneous reasons is really difficult to assess. The decline of the non-cooperation movement in 1923 was possible<sup>4</sup> an important factor responsible for this increase, although the pressure by the candidate of inducing the voters and the growth of genuine political interest can not be ruled out. In 1920, 45 percent of the Council of State electorate in contested constituencies went to the Polls. The percentage increased to 55 at the succeeding

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1,2. Indian Statutory Commission Report, Vol. I, Survey, p 222.  
See also Memoranda, p 36.

3. Reforms Office File No. 133/31 R.

4. Indian Statutory Commission Report, Vol. I, According to Reforms File, No. 133/31 the percentage was 34 (p 10)

election,<sup>1</sup> but fell to 33.4 percent in the elections to the third Council of State.<sup>2</sup> The fall in the percentage was mainly due to the launching of Civil disobedience movement in 1931-32.

The Central Legislature's remoteness, and the feeling that Burmese were powerless to obtain a sympathetic consideration of their special interests in a body in which their representatives formed a small fraction was partly responsible for their lack of interest in the elections of the Central Legislature. Nearly half of the total electorate of the Council of State resided in Burma with only 2 seats in the Council, while 32 members were elected by the remaining voters spread over the whole Sub-Continent of India. In the elections of 1935,<sup>2</sup> 5 percent of those qualified in Burma voted for the Council and 14.2 percent in 1931.<sup>3</sup>

No woman was entitled to sit in the Council of State, or to vote for election to it. It was open to the Council by passing a resolution to remove either or both of these barriers, but it showed no inclination to do so till 1935.

The sessions of the Indian Legislature ( including those of the Council of State) were usually held at Delhi at the end of January or in the early days of February and continued for

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1,2. Indian Statutory Commission Report, Vol. I According to Reforms File No. 133/31 the percentage was 34 (p.10)

3. Indian Statutory Commission Report, Vol. I, Survey p 22.



two months generally. It was during the Delhi Session that the Finance Member used to present the Budget and the discussion on the Finance Bill took place. In April the climate of Delhi begins to get hot and the Government of India used to move to Simla. The sittings of the Council of State as well as those of the Legislative Assembly were resumed at Simla in the later part of the year, usually in August and September, and ordinarily covered several weeks. An Indian member had not so continuous a call upon his attendance as a British member of Parliament or a member of the Indian Parliament since 1950. Even so it appeared to be difficult to keep Indian members in full attendance ~~at~~ throughout the session. Payment to members used to take the form of a compensatory allowance for the period of his absence<sup>1</sup> from home.

The time of meeting was in the afternoon and the hour of adjournment over which the President used to exercise a greater control than exists in Dominion Parliaments, was usually reached by 4 or 5 O' clock. The chamber was arranged after the usual continental model (as it is arranged to day) with a desk for each member, the whole in the shape of a horse-shoe, broken up into wedges of seats by gangways. Members of the Government used to sit on the right of the Chair, with the official bloc behind them. On the extreme left of the Chair, the leader of

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1. See The Simon Report, Vol. I.

the Swarajist Party Mr. Ramadas Pantulu of Madras, and later the leader of the Progressive Party Rai Bahadur Lala Ramsaran Das from Punjab and their followers sat. Members used to speak from the places where they sat, and when a division took place, moved into lobbies.<sup>1</sup>

The Council of State as a revisionary Chamber received a less preponderating measure of notice in Political Circles and in the Press. Its general atmosphere enormously differed for that of the Legislative Assembly. Antagonisms were lesser, debates more sober and work generally less strenuous.

The Council of State represented "the more conservative elements in the Country and in particular" Sections of Society which were most to lose by hasty and ill considered legislation.<sup>2</sup> It was not surprising therefore that it took a different view on many questions from the Assembly. Between 1921 and 1928, on no less than five occasions the two Chambers reached, at any rate in the first instance, different conclusions on the Government's Finance Bills. On nine other occasions, they were at variance on legislative measures.<sup>3</sup> During the whole life of the Council of State, it was on fourteen occasions that the two Houses came in direct conflict with each other and with the Government and it was on those occasions that the Council of State passed measures in the teeth of Popular Chambers opposition and sided with the Government.

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1. See The Simon Report, Vol. I.

2. Ibid, Vol. I, p 23.

3. Ibid, Vol. I, p



Basis of Relations  
between the Legis-  
lature and Executive.

The first essential for a correct  
understanding of the relations of

the Central Government with the Legislature in India (1919-45) is to divest the mind of analogies drawn from the British Parliamentary system. A British Cabinet or the Cabinet of our Free India, can only survive, so long as they have the support of the majority in the Lower Chambers. The Central Executive in India - the Governor General in Council was on the other hand, entirely independent of and could seldom count with confidence on a majority in the Indian Legislative Assembly. No defeat could drive its members from office, and the statutory powers of the Governor General in Council were such as to prevent opposition from bringing administration to a standstill. Again the opposition in the British and dominion parliaments has always before it the prospect of a return to office, when it will itself bear the burden of responsibility and have to justify its former declarations. The position in India under the Act of 1919 was completely different. The oppositions opportunities for criticism and its powers of influencing the course of Legislative and administrative business were extensive. But it was not vested with responsibility for the administration nor was it called upon to reconcile its criticisms with the requirements of actual Government. On the one hand, while the attitude of the Assembly was strongly influenced by its constitutional irresponsibility in Political matters, it cooperated with Government in a good deal of constructive work.

Groupings in the  
Assembly and  
Council

There was nothing in the Indian Legislature which even nominally responded to the working of a party system in England or elsewhere. Parties in the Lower House were predominantly Communal Groups. The aim of the Swarajists was to create a Political party on national lines. Their attempt having failed, the Constant cleavage showed itself in debate and voting. The Swarajists were predominantly Hindu and similar was the Nationalist Party. The Central Muslim Party was entirely Mohammadan, and so were its successors - the Independent's and the Muslim League Parties. On the other hand, the position was quite at variance in the Council of State. Before 1926, x there were no parties, but since the Swarajist made their appearance there also emerged a regular Swarajist opposition group. But their number was extremely limited - nine only. In 1932 for the first time the Progressive Party was formed with a membership of 15 including the liberals and the ex-Swarajists. The Communal tension between the members of the Council was not however, so strong as it was in the Legislative Assembly.

The Official Bloc

The Official bloc of 17 to 20 members was regarded as completely under the orders of Government. The recommendation of the joint report for relaxation of Control over their right of vote and speech (except in case of Provincial member) was applied only casually.



The influence of this block over the proceedings of both Houses and Particularly over those of the Council of State was enormous. A solid bloc of votes cast definitely for Government had not only a decisive effect on divisions in the House, but it often helped to rally to its support, elements which would have hesitated to support it otherwise. Secondly, the contribution they used to make to the debates through their speeches based on practical experience, were substantial. Finally, the Provincial Official members expressed the Provincial Official views, though not frequently. But their main importance for the Government was in that that they constituted part of the nominated votes for it in the Council of State.

Nominated  
non-official  
members

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The natural tendency for nominated  
members was to support the Government

which selected them for membership of the Legislature and the Simon Commission heard the suggestion made that, if a nominated member opposed Government in season and out of season, he was likely to be passed over when his place came to be refilled in the next House. But there were several of them who faithfully represented the interests committed to their charge and exercised a free judgement. In this connection the names of Mr. G.A.Natesan and Sir David Dev Dass are worth remembering.

The Legislative Authority  
of the Indian Legislature

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The one reality about the  
Indian Legislature, most

plain though painful, was its extremely limited authority over

legislation; social reform measures were subject to Governor General's approval who was not bound by its decisions, and, Provincial affairs were out of its competence. Even when its approval for legislative measures was necessary the Act provided that if it failed to give a verdict in favour of Government on those proposals, the Governor General could certify the measure in the interest of good Government for India and a Bill so certified was to be deemed for all practical purposes as an Act passed by the legislature. During the recess of legislative machinery, ordinances could be promulgated by the Governor General, which were to be operative only for a period of six months and could be extended for a similar period. So far as private member's legislation was concerned more important types of the Reform Measures were subject to Governor General's previous approval.

The legislative Authority of both the Chambers was exactly the same, except that the demands for grants (excluding reserved heads) was the exclusive right of the legislative Assembly. The Finance Bill or the appropriation of funds through taxes on income, land, industry, or commodities had to pass through both Houses of the Indian Legislature.

Now in order to examine the working of the Council of State as a Second Chamber, the legislation of the period may be divided into three broad categories. The first category included a large number of legislative Acts ranging from measures of Social and labour amelioration to repressive measures and Finance Acts which



passed by both the Chambers and involved no conflicts of authority.

The Second category included the legislative proposals of the Government of India on which the two chambers reached on almost different conclusions and brought about the constitutional crises which was averted by the use of extra-ordinary powers of certification and recommendation, exercised in favour of the Council of State as against the Legislative Assembly. This category includes beside others, 14 important bills, nine of which were Finance Bills or concerned with financial problems and five were the 'so-called' repressive measures. It is indeed this category which includes the least number of measures as compared to the first and third category.

The third category comprised of Bills which were generally introduced by private members in the Legislative Assembly but were subsequently rejected by the Council of State. These legislative proposals had their origin in the Swarajists desire of using the machinery of the Legislature for retaliatory purposes by passing the Bills for the abolition of repressive laws and making impracticable alterations in the existing Criminal code of the country. Though measures of Social amelioration were also proposed by those members, but most of them were passed by the Council of State with a few verbal amendments and so they are included in the first category.

1. The first category includes Child Marriage Restraint Act and the Indian Penal Code (Age of Consent Amendment) Act of 1925, Indian Succession Act, Religion Endowments Act and the Sikh Gurdwaras Act, 1925; Hindu Family Transactions Act, 1928 Hindu Women Right to Property Act 1934 as amended in 1937 and 1938, Hindu Law of Inheritance (amendment) Act, 1928 Khaddar (Name protection Act, 1934; Parsi Marriage and Divorce Act, 1934 and 1934; Durgah Khwaja Sahib Act, 1936, (originated in the Council of State ) and Arya Marriage Validating Act and Cutchi Memon Act, 1938. The Council was not ready to pass such measures without being convinced that these were not passed by the originating Chamber either in a hurry or on partisan considerations. Thus these Bills which were passed by the Council after their passage through the Legislative Assembly, were actually held up in the latter Chamber for considerably long time and widely circulated for eliciting public opinion.

One of the most outstanding social measures which aroused general public interest was the passage by the Indian legislature of the Child Marriage Restraint Bill. The great indignation aroused by Mrs. Mayo's publication 'Mother India touched the conscience of the Hindu community and the reaction found a channel towards reformation. The said bill was a direct expression of the reformatory feelings. There was considerable

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1. See Mr. P.N.Sapru's speech in the Official Report of the Council of State in connection with the Child Marriage Act 8th April, 1938, p 673.



controversy over the Propriety of the Bill. Some of the orthodox sections of the Hindu Community felt that the Bill was a direct encroachment on their religious rights. In that atmosphere, the Bill was introduced in the legislative Assembly on the First February and was debated there on 15th of September. The object of the Bill was to prohibit the marriage of Hindu Girl below the age of 12 and that of boys below the age of 15. As a result of this restriction a far reaching aim of Child widowhood could also be achieved. Quoting from the Census Report Mr. Sarda told the House that in 1921, there were 612 widows who were below 12 months of age, 498 between 1 and 2 years; 1280 between 2 and 3, 32863 between 3 and 4 and 6758 between 4 and 5 years of age, making a total of 12016 widows all under 5 years of age. The total number of widows under 10 years of age was 85580, between 10 and 15 years old 233533; those under ten was 97596 and those under 15 years of age was 331,793. These numbers included Jain and Arya widows and if Brahmos and Sikhs were included the total numbers would have reached 332,472 widows all below 15 years of age in 1921. Only 44 percent Hindu wives led married life when they were below 15 years; and 11 per cent when they were below 10. Discussion in the Assembly centred round two points - whether the Bill should be circulated as proposed by J. Crerar on behalf of Government or it be referred to a Select Committee as was moved by

the leader of the Congress Party. The House adopted the latter<sup>1</sup> motion.

The Government took objection to certain provisions of the Bill which it regarded as unworkable. Accordingly some alterations suggested by the Government were made at the Select Committee stage whose report was received on January 29. The discussion of the Bill was postponed because the Age of Consent Committee had not yet submitted its report with which the subject of the Bill was closely connected.<sup>2</sup> It was only in the autumn of 1929 that the Bill was finally passed by the originating Chamber and was brought to the Council of State. The gravity of the situation and the long delay in its passage had both convinced the council of the necessity of the measure and of the favourable attitude of the public or atleast of the non-existence of the violent opposition. The measure was accordingly passed and Credit shared by the Council of State. The Bill came again before the Legislature in March and then in April, 1938. It was brought before the Council of State by Divan Bahadur Sir Ramunni Menon, a nominated non-official of Madras. The Leader of the Progressive Party, which was the majority party of elected members, supported the Bill on the basis of religious texts. The mover in the end, expressed his appreciation of the kind support given to the measure by several members

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1. *Ibid* Material of India in 1927-28, pp 52-53.

2. *Ibid*, p 63.



who spoke on it and particularly Lala Ram Saran Das, the Leader<sup>1</sup> of the Progressive Party.

Another amendment of the Act was sought by the Legislative Assembly in April 1938 and was allowed by the Council of State. This time, the amending Bill was moved in the Council of State by the leader of the Congress Party. Mr. Ramadas Panthlu. The amendments extended the jurisdiction of the Act to first class Magistrates, while the original Bill confined it to District and Presidency Magistrate only. Secondly, the Bill as amended relaxed the requirement of furnishing security by the complainants. Thirdly, the Bill authorised the Magistrates to issue injunctions stopping the marriage before it had actually taken place and the consequent provision <sup>of</sup> ~~for~~ higher punishment when marriage is performed in violation and such injunction. The Mover himself complained of the non-comprehensive nature of the amending Bill, which complaint was repeated by several other speakers also.

Sir Jadish Prasad told the House that the Bill was fully discussed in the Lower House, and by the Selected Committee, Opinions were also invited from local Governments the communities and bodies interested in the measure. After fully consideration the Government decided to support the measure. The leader of the opposition Rai Bahadur Lal Ram Saran Das welcoming the measure observed that any flaws which experience had

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1. C.S.Debates Official Report, 7th March, 1938, pp 346-54.

shown to exist in that legislation must be removed. Sir A.P. Patro opposed the Bill on the ground that it did not adequately fulfill the needs of the community which require the further tightening of the grips of law over evaders. The Bill was passed<sup>1</sup> by the Council without even a division.

The Hindu Inheritance (Removal of Disabilities) Bill was the measure on which the Council of State exercised its authority more decidedly and held it over for several years. The Government of India remained neutral on this occasion, and therefore the Council deemed it as its duty to interpose so much delay that the mind of the nation should be able to clearly express itself. But when it saw that one Assembly after the other was continuously pressing for the changes in the Hindu law of Inheritance, it gave way.

The Bill aimed at removing some doubts and to amend the Hindu Law so as to enable the disobedient sons and physically disabled persons to inherit the property of their parents. The bill was first introduced in the Legislative Assembly in 1921. It was circulated for opinions. It was then referred to a Select Committee of the Assembly which had the benefit of assistance of the then Home Member, of Mr. Ranga Chairiar, an staunch advocate of orthodox view and also of Mr. Seshagire Aiyar, a

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1. C.S.Debates Official Report, 8th April, 1938, pp 668-689.



retired judge of the High Court. <sup>On</sup> ~~Both~~ both occasions the Assembly passed it in the same form. The Bill for the first time was brought (after its passage through the Lower Chamber) on 19th July 1923 before the Council of State. The council thought the Bill had not received sufficient consideration and that there were many matters to be explained. Accordingly instead of rejecting it, they held the Bill over for further consideration but under the rules of procedure it lapsed. Then another Bill was introduced in the Legislative Assembly in the same form, and after its passage there, it was again considered by the Council on a motion by Sir Sankaran Nair on 17th September, 1928. The Government again took a neutral attitude, which meant that official members were free to vote in any way they thought fit except the members of the Government who were neither to oppose nor to support the motion. The Council of State being convinced that the demand for the passage of that Bill was a real one, passed it after a short discussion in the same form as it was passed by the Legislative Assembly. The motion<sup>1</sup> was adopted without a division.

The same day Sir Sankaran Nair piloted another un-official Bill in the Council of State, which is known as the Hindu Law of Inheritance (Amendment) Bill. It was designed to alter the order the order in which the heirs of a deceased Hindu were entitled to succeed to his estate. According to the unamended Law, the successors of a deceased were all males connected with the deceased either

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1. C.S. Debates Official Report, 17th September, 1928, pp 109-116.

in the descending or in the ascending lines only through males. Then came those persons who were related to the deceased through female relatives - e.g. the sisters son or mother's brother's son. Now all these male successors numbered 204 and all Bandhus - the latter category numbered 128. But the irony of the fate was that females were totally excluded from inheritance. The Bill proposed to recognise the right of son's daughter, daughter's daughter, sister and her sons. The daughters were again purposely excluded. The Mover told the House that the position of the Indian Women was so low that if India really desired to rise in the scale of civilization it was essential to recognise female's right to succession.

The Bill like its predecessor was first introduced in the Assembly and was circulated by that body for eliciting Public opinion. A novel procedure of Publishing the aims of the Bill in the newspapers and inviting opinions thereon was adopted by the father of the Bill - Mr. Seshagiri Aiyer. On the basis of the opinions received, the Select Committee made important changes in the Bill which were accepted by the Legislative Assembly. It was brought before the Council by Sir Maneckji Dadabhoy, but in the mean time the council was dissolved. The Council took the same objection as in the case of the former Bill, that the Bill had not been adequately dealt with.

Again a Bill for this purpose, that is, recognising the rights of inheritance of these four classes of individuals was introduced into the legislative Assembly. Nobody opposed it considering the discussion that had taken place and the opinions



that had been received earlier. The Bill was passed unanimously. The matter then came before the Council of State for approval. Sir Sankaran Nair while pleading for the passage of the measure advised the Council to take the proper course of passing a Bill which had been twice passed by the legislative Assembly. He said, " I suppose nobody will deny that the Legislative Assembly is more representative of the popular interests than this House at any rate. It would be the case against the Council of State before the Simon Commission that this Council of State is composed of reactionaries and unreasonable people. Twice the Legislative Assembly, which is comparatively a more popular body has passed this Bill. In whose interest? In the interest of women. It is a matter which will appeal to all the civilised nations of the world." But the Bill as it stood, was very defective in its wordings. Mr. Rama Das Pantulu, the Leader of the Swarajists in the Council of State, referred to some half a dozen such defects in various clauses of the Bill. The Council could not do justice either to the Bill or to its duty as a revising chamber, by passing it in that defective form. Again, it was on the motion of the same Swarajist Leader that the Bill was committed to the charge of a Select Committee for removing these defects. It was only when the Report of the Select Committee was submitted, that the Council of State passed it in an amended form which was later approved by the Legislative Assembly as well. The Select Committee

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1. C.S. Debates Official Report, 17th September, 1928, p 119.

to which the Council of State referred the Bill was asked to submit its Report within three days. This Committee comprised beside others, Mr. G.S.Khaparde and Mr. Narayan Prasad Asthana - the two opponents of the Bill. Thus the Council of State did not only make an effort to redraft the Bill but it also tried to bring about a Conciliation among the rival schools of religious thought. Further, by including Sir Hairy Haig, in that Committee, it enabled itself to benefit by the official experience of drafting the Bills. The Council then amended the Bill in the light of recommendations of that Committee and took the credit of passing it without a division.<sup>1</sup>

Once, the Principle to give women the right of inheritance was accepted by the Council of State, it did not refuse to extend its application over those classes of women which were not included in the foregoing legislation. Thus when in April, 1937, Hindu Right to property Bill was sent to it by the Legislative Assembly not a single dissentient voice was heard in the Council of State, though the Bill had far reaching effects on the Inheritance Law of the Hindu Community. It was introduced in the Legislative Assembly by Dr. Deshmukh. The position before the passage of the Bill was that in a joint Hindu family, women could claim a share when sons or brothers partitioned the property and that even as a

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1. C.S. Debates Official Report: 17th and 21st September, 1928, pp 116-133 and 196-197 as also C.S. Debates Official Report 26th September, 1928, pp 220-233.



limited estate. But on the death of her husband, the woman could not become a Co-partner. She was entitled, if the family happened to be a Joint Family, to maintenance. She could claim a share if the sons wished to divide the property but could not become a Co-partner. The effect of the proposed Bill was to make the widow a sort of co-parcener and <sup>give her</sup> the right to claim a partition also. The Bill affected parties governed both by the Mitakshara and the Dayabagha Schools of Hindu Law. The Mover, Mr. F.N. Sapru, the young liberal, requested the Council to look upon it as a "measure of Social Justice."

The Government did not propose to participate in the Debate. They were ready to support the Bill provided the Council of State exercised the function of a true Second Chamber by not proposing any amendment and passing the Bill in the form in which it came from the Legislative Assembly.

Mr. Hossain Inam intervened in the Debate just to make clear the position of the Muslim members in the House. He referred to the promise of Hindu members of the House to abide by the decision of the majority of Muslim members when a Bill affecting their religion was being debated in 1936 in the Council. It was a conventional thing done voluntarily. The Bill was passed without any criticism and no delaying motion was moved. The little criticism which was levelled against the Bill was that it was very limited in its object.

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1. C.S. Debates Official Report, 6th April, 1937, pp 733-739.

Social Legislation, in India, being the most controversial subject for legislators, due to its connection with the personal and religious practice and custom of the Hindu Community was not a proper field of a Second Chamber. Initiative for such reforms should have come from a House which is the representative of popular interests and has a direct mandate from the people generally. The Council of State being the Second Chamber of the Indian Legislature consciously avoided from indulging in that enterprise which suited the Lower House here. Whenever such an initiative was taken by a private member in that respect, the Council either openly rejected the proposal or subjected it to an unlimited delay so that the measure die at the expiry of the term of the Council itself, or it successfully induced the Mover to withdraw the proposed Bill.

The year 1938 saw the killing of several measures initiated by private members, by either of the tactics just mentioned. Taking the initiative Mr. Susil Kumar Roy Chaudhry, introduced the Polygamous Marriage Regulating Bill on the 6th of September, to regulate Polygamy in British India. The Bill as framed, made no exception for any Community. The Muslim members of the Council opposed it on the ground that the holy quran had permitted their community to solemnise four marriages under certain conditions. The Government remained strictly neutral and the motion to introduce was carried by 17 votes against all Muslim. But as the measure, beside aiming at a far reaching Social Change, was pernicious to the Communal harmony of the country, the Council decided



to circulate it for eliciting public opinion without mentioning any specific time limit. This signalled the death of the measure.<sup>1</sup>

Another measure, somewhat similar in nature but restricted in scope by its application to the Hindu Community, only was brought forward by Mr. G.S.Motilal of Bombay. It was introduced without any discussion and later the Mover himself proposed for eliciting public opinion thereon.<sup>2</sup> The Bill was never debated then by the Council of State. When the Mover of the Bill came to know that there were two Bills introduced in the Legislative Assembly, one aimed at facilitating the acceptance of divorce by husbands, and the other to end not only polygamy but polyandry also, he thought it fit to withdraw his motion for reference to the Select Committee in 1939.<sup>3</sup>

Mr. G.S.Motilal's measure to further amend the Hindu Women's Right to Property Bill met the same fate. The original Bill came before the Council after its passage through the Lower Chamber and provided for estate rights for Hindu Women over the property they inherited under the Hindu Women's Right to Property Bill of 1937. This further proposed amendment had as its aims, the inclusion of daughters in the list of successors and to give such women successors full right over their property. The Mover asked the Council to

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1. C.S.Debates Official Report, 6th September, 1938, pp 60-63.  
9th September, 1938, pp 202-203.
  2. Ibid, 6th September, 1938, p 101, and 204.
  3. C.S.Debates Official Report, 20th Feb., 1939, pp 363-64.

circulate it for eliciting Public opinion which the Council accepted.<sup>1</sup> But later the measure was never brought to the Council.

The Government of India in 1939 laid down clearly their policy with regard to initiation of such Bills in the Council of State. It was announced by Mr. F.H. Puckle (Home Secretary) that " That attitude of Government is to oppose any further motion of this Bill. The reason is perfectly simple. It is the established Policy of Government in matters like this, which involves legislation which goes to the very root of Social habits and indeed in some cases to the religious beliefs of the people of this country, not to encourage legislation untill it is shown clearly and unequivocally that the majority of the Communities who will be affected by the legislation demand it."<sup>2</sup> This demand in other words, could be clear only if the more popular House took and persisted in its initiative. The Council was therefore, not a proper body for originating such legislation.

Bills aimed at Social Reformation but far less controvertial in nature and Principle successfully originated in the Council and thus it helped in saving of much valuable time of the more Popular House. Thus the first measure of a non-controvertial nature which emerged from the Council of State was Dargah Khwaja Sahib Bill on whose passage the Mover congratulated the third Council of State

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1. C.S. Debate Official Report, 9th Sept., 1938, p 193 and 13th Sept., pp 265-266.

2. Ibid, 20th Feb., 1939, pp 363-64.



for passing a private members legislation so expeditiously on the last day of its life.<sup>1</sup> Similarly the enactments aimed at clarifications and codification of the personal laws of minorities were not completely absent from its proceedings. That in the passage of Acts like Parsi Marriage Divorce Act 1934, Muslim Dissolution of Marriage Act, 1939, Cutchi Memon Act of 1938, the Council took the initiative. It proves that it was not completely indifferent or disinterested in the social and religious problems of the country, provided these were not beyond the proper limits of its authority as a Second Chamber.

Labour  
Legislation 0  

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Industrial legislation, concerning not only specific industries like electrical

undertakings, factories, mines, Cotton ginning and Pressing and the Tea Gardens, but also affecting the position of labour was passed by both Houses of the Indian Legislature. The Council of State concurred in the decisions of the Assembly regarding the Indian Trade Unions Act, 1926, and that of 1928; The Workman's compensation Act, 1923, 1938 and 1939; the Breach of contract (Repealing) Act, 1925; Indian Factories Amendment Act of 1926 and 1934, Employers and Workers Dispute repealing Act of 1932; The Districts Emigrant Act, 1932; Trade Disputes (Amendment) Acts of 1932, 1943 and 1938; Children Pledging of Labour Act, 1933;

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1. C.S. Debates Official Report, 17th Oct., 1936, pp 518-529.

Employment of Children Act, 1938; and its subsequent amendments in 1939; Indian Mines Act as amended in 1938; Employers Liability Act of 1938; Coal Mines Safety Bill, 1938; Indian Dock Labour Bill 1934 and Employment of wages Act of 1936, to give only a few significant examples.

Indian Workers from the very commencement of Industrialization in India, suffered under two conflicting interests. On the one hand the organization of workers was deeply suspect in the eyes of Government and on the other any official effort to introduce labour legislation was regarded by the Capitalists as a subtle design to check the growth of industries in India. When in spite of handicaps, the Bombay Textile Industry showed signs of progress, the Manchester Chamber of Commerce asked the Government of India to apply the provisions of the British Factory Act to regulate hours of work and to prescribe Child Labour. In India on the other hand an Industrial Conference was organised to afford a common platform to Industrial magnets from all over the country. An Industrial labour Commission was appointed by the Home Government to inquire into the labour conditions in 1907. In his minute of dissent, Dr. T.R.Hair "refused to shut his eyes to obvious facts and gave credit to Lancashire for having in the past sought and obtained (Whatever the motive) improvement in the conditions of Indian Labour." Thus in the pre-war period it was not the

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1. Shiva Rao: Industrial Worker in India, p 23.



Indian leadership which advocated Labour amelioration, but all progress was really made through the forces exerted from Lancashire in its own interest.

With the introduction of Reforms and the fiscal autonomy Convention, Lancashire was discouraged from at least openly interfering with factory legislation. To a Deputation of Mill owners of England, the Secretary of State for India, while defending the enhancement of Customs duties said, " After that report by an authoritative Committee of both Houses and Lord Curzon's promise in the House of Lords, it is absolutely impossible for me to interfere with the right which, I believe, was wisely given and which I am determined to maintain to give the Government of India the right to consider the interests of India<sup>1</sup> first, just as we , without any complaint from any other parts of the Empire and the other parts of the Empire without any complaint from us, have always chosen the tariff arrangements which they think best for their needs, thinking of their own Citizens first."

After the introduction of Reforms, the Government sought to come to an understanding with the Capitalist Class against the rising consciousness of the working class in India, stimulated by the Russian Revolution. The vote was conferred up on about

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1. Quoted by Shiva Rao: Industrial Worker in India, p 33.

7 or 8 million people - an enormous increase in the numbers of electors, no doubt - but so far as the workers were concerned, the proportion enfranchised was negligible. At the commencement of the post war period the Indian Capitalist found themselves, in circumstances of exceptional advantage. Writing in 1938 Mr. Shiva Rao remarked: "In fact throughout the last 20 years, they have manoeuvred for position <sup>i</sup>with considerable adroitness and not with a little success. On several occasions, indeed they have played upon Nationalist Sentiments with a Shrewed eye to personal advantage. During elections they helped, even if they did not join the Congress Party. From the Government they obtained substantial assistance - a protective policy, the abolition of the Cotton Exercise Duty, and a practical monopoly of such Political power as was handed over. From the Congress too, they exacted concessions, for example in demanding the abolition of the Cotton Excise duty and passing measures of protection for certain industries. Indeed suggestions were not lacking from some leading capitalists when the Royal Commission on Labour was appointed in 1929 that following the procedure in regard to Sir John Simon's Commission on Political Reforms, Indian Labour should similarly adopt a policy of boycott.<sup>1</sup>" Mr. Fisher in his book quotes Mr. Gandhi as saying that the bulk of money needed for Congress was derived by

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1. B. Shiva Rao: The Industrial Worker in India, pp 35-36.



the generous donations of wealthy Hindu Industrialists.<sup>1</sup> The direct representation of the Indian Commerce was meagre but most of representatives elected for general and Muslim seats either ~~had~~ belonged to Political parties supported by industrialists or were themselves members of the aristocratic and bourgeois families. Thus from the very commencement of Reforms, there was a quadruple alliance between the Indian Bourgeois and the National Movement (because the former was afraid of the rising influence of the party upon workers)<sup>2</sup> and between the former and the Government as also between these three and the Indian Legislature of which the Council of State was but a part. The Acts passed by the Indian Legislature were not so progressive as to bring the Conservative Council of Council of State in conflict with the Legislative Assembly.

It is, however, interesting to note that between 1919-1945 not a single measure aimed at the labour amelioration was introduced by the private members of the legislative Assembly. All such measures were initiated by Government and it was after these were minutely scrutinised by various official conferences, Select Committees and the Lower Chambers, that these measures reached the Council of State and because the Government had a commanding position in that Chamber, there was very little possibility of their rejection. Thus, while the two Chambers of the Indian Legislature widely differed in their political and constitutional outlook, there was naturally a complete agreement between them and

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1. L. Fisher: A Week with Gandhi (London 1944), p 51.

2. R. Palm Dutt: India Today.

the Government of India on labour policy. How timidly the <sup>Lower</sup>~~House~~ House and the Government of India moved in the direction of labour welfare, will be borne out by the following few examples:-

The Factories Act of 1922 was amended in 1923, 1926 and then in 1934. Certain administrative difficulties were experienced and so ~~then~~ the consolidating Act was passed on the recommendation of the labour Commission in 1934. Thus the Bill had its origin in the Report of the Royal Commission which was published only a few years back. The amendments suggested by the said Commission were thoroughly studied by Government. A Bill was then drafted and circulated for eliciting public opinion. Every care was taken that all interests concerned should have ample opportunity for study, criticism and suggestions. The criticism received was then examined by the Department of Labour and Industries for months. The Bill as recast, was then considered by a conference of Chief Inspectors of Factories at Simla, and was again modified according to their suggestions. The Bill was then submitted to the Legislative Assembly which committed it to the charge of a Select Committee. The Committee held long<sup>g</sup> sittings and examined it very minutely and made substantial amendments. Having received the Bill as reported by the Select Committee, the Legislative Assembly made further amendments and the Bill was finally passed in Lower Chamber which increased the 48 hour week to 54 on the plea of foreign competition, backward State of Indian Industries, the depression and the deficiency of Indian Labour. Practically

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1. C.S. Debates 14th Aug., 1934, pp 159-160.



there was nothing left for the Council of State to amend or to protest against, except a note of warning by the Leader of Progressive Party to the effect that, ' in any measure that we pass we must not only consider whether they are beneficial to labour but also whether they are equally beneficial to industries.

Sir, that at present as far as the Indian Textile Industry is concerned in which I am greatly concerned, I might say Sir, that although the market price for some of the produce of some of the best managed is a quarter of an anna per pound, if this Bill is passed the Indian Mill owner will lose half an anna per pound on his cost of production.<sup>1</sup> It is worthy to note that the Government of India and the Legislative Assembly took such a long time in passing an amending and consolidating Bill, which was to the detriment of labour and in the interest of Capitalist generally. The sixty hour week fixed by the Parent Act in 1922, was not much in advance as compared with western industrialised countries where the labour had already secured 48 hours week. In India herself the operatives in some of the leading centres had secured a 60 hour week before it was embodied in the Law and it was for this reason that employers generally advocated or consented to its<sup>2</sup> introduction.

The Trade disputes Act of 1939 was designed to curtail the Workers right to strike by declaring it illegal if it occurred without satisfying certain preliminary conditions or at a time

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1. C.S. Debates, 14th Aug., p 164. See also pp 159-207 for full Debate on the Bill.
  2. Royal Commission on Labour in India Report, p 37.

when conciliation Boards were carrying negotiations. The Principal Act passed in 1929 at a time when the Merrut trial was still in progress. All the active leaders of the working class were under arrest. On the eve of the amending Act of 1939 - the number of strikes had reached 379 or the highest since 1921 and 676,000 workers were involved. It was "the highest number on record over thrice the recorded trade union membership; and the total number of working days covered was 8983,000 or the highest since 1929."<sup>1</sup> It was to check this tremendous growth of working class movement and to help the industrialists that the Act was amended in 1939 and the rights of labour were curtailed. A note of warning was sounded by Mr. Hossain Imam against such drastic curtailment of labour rights, but the Government of India and the Lower Chamber were anxious to get the Bill passed, the Council of State being a revisionary body could not refuse the united<sup>2</sup> demand of the two.

Instances of this type of alliances between the Government and the legislative Assembly, to the detriment of the interests of labour may be multiplied beyond limits. Under the workmen's compensation Act, the amount payable in case of death was thirty times the monthly wages, ranging between a minimum sum of 240 to 2,500. The Royal Commission had recommended a substantial advancement, the limits suggested being Rs 600/- and Rs 4,500/- but the Select Committee of the Legislative Assembly reduced the

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1. Rajni Paln Dutt: India Today, p 395.

2. See C.S. Debates: Official Report 1st April, 1938, pp 521-47.



figure to Rs. 500/- and Rs. 4,000/- respectively. Similarly for total disablement, the Parent Act had prescribed sums representing 42 times the monthly wage, with a minimum of Rs. 336/- and a maximum of Rs. 3,500/- The amending Bill introduced by the Government of India proposed an increase of the minimum to Rs. 840/- and the maximum to Rs. 6,300/-. But the Select Committee reduced these figures to Rs. 770/- and Rs. 5,600/- respectively. The Bill had proposed the same minimum and maximum for minors as for adults, but the Select Committee introduced a flat rate of Rs. 1200/- for all minors as the amount of compensation. With regard to temporary disablement also, the Select Committee reduced the figures for certain classes of wages. It is important to remember that the amending Bill of the Government was based on the recommendation of the Royal Commission which included both officials and representatives of the employers. But the Select Committee maintained that the increases proposed in the Bill were too heavy, taking into account the drop in prices since the Report of the Commission. A minority made strenuous efforts in the Legislative Assembly to restore the limits proposed, but without<sup>1</sup> success."

Thus in reality, the Council of State was disabled to play its conservative role on measures of labour welfare, because it was already played by the Government the Select Committee's and a Legislative Assembly representing more Progressive bourgeoisie

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1. B. Shive Rao: Industrial Worker in India, pp 214-215.

opinion than the Council of State. One thing must however, be noted, and that is that the area of Agreement between the two Chambers with different Political outlook extended beside the social reform, in the labour Legislation also.

Council of State and ( (   
Maintenance of Law (   
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(The attitude of the Legislative Assembly towards measures dealing with law and order was on the whole

unfavourable to greater stringency.) On the other hand the Council of State had showed far greater response to official proposals for empowering the Government to deal with subversive and revolutionary activities. For this difference in the outlook of the two Houses on the problems of maintaining peace and order in the country nothing but their composition was responsible. (The Legislative Assembly was a more popular body; its electorate was far more influenced by Political propositions<sup>ness</sup> than that of the Council of State. The Political Parties of comparatively extreme views and having closer contact with the masses, exercised a much greater influence on its Legislative Assembly's electorate and most of its members belonged to one or the other such party. The leadership of these parties was based on popular support in the main. Their funds were supplied by the Indian capitalist, who by its very nature was selfish. He was antagonistic to the British Imperialism and the labour movement alike. The leadership of the country had the two fold task of balancing the interest of labour and capital and thus maintaining a common front against the foreign rulers.



It was therefore natural for the Assembly, which represented that leadership, (in spite of the conviction that the sabotage and anarchic activities were harmful to the ordered progress of the country and against the interest of capitalists), to denounce the crimes against State on the one hand, and to refuse powers to the Government to suppress them, on the other. But complete and emphatic refusal was to prove injurious both for capitalist and for the leadership itself. It was therefore bound to support the Government with discrimination. Thus it was not the Council of State alone which always supported the Government on those repressive laws but in most of the cases the Legislative Assembly also sided with the latter.

The Council of State on the other hand, avowedly direct representative of the so-called vested interests, who were not bound by popular support for their election and leadership, was not subject to such vicissitudes. It was, therefore, unflinching and consistent in its support for measures aimed at the suppression of these subversive activities. A brief survey of some of the Acts passed by the two Chambers will reveal the extent to which they joined hands with Government in the maintenance of law and order.

Take for example the circumstances in which the Press (emergency) Act of 1931 was passed by the Indian Legislature. This Act was first enacted and applied in 1910 and was repeated in 1922. From that year until the introduction of the Press Ordinance, no restriction was placed on the Indian Press. The object of the Act was to check the flood of violent and seditious articles inciting the public to take arms against the Government

at a time when economic and political discontent was at its height and every section of Indian - labour, capitalist - was dissatisfied. The Press run by extremist elements and aided by the capitalist was engendering a militant mood in the masses and the Congress had already started its Civil disobedience movement. The number of periodicals and newspapers had risen to 246 before 1931, and between 1931 to 1932, the number increased to 419. At the time, the Press Act was passed the Government had three dangers in mind - civil disobedience, terrorism and communism. The total number of publications prescribed under the Act by Local Governments was over 500 in 1930, and 400 in 1931<sup>1</sup>. But whatever the 'modes operandi' and its repercussions might have been on the national press, it is an undeniable fact that the responsibility for its passage was not of the Council of State. In giving its approval to the measure, it merely acted on the principle that whenever the Government of India and the Legislative Assembly were in complete accord, it is not proper for the Upper Chamber to reverse the decision of the former.

Similarly the Criminal Law (Amendment) Act of 1932 was suppressive in nature and in particular its section 13 was very drastic. It provided for the confiscation of property and funds of an association declared illegal under the said Act.

Mr. M.C.Hallett conferring the drastic nature of the Section

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1. Figures quoted from the Official information vide Council of State Debates Official Report, 20th September, 1932, p 12.



aimed at the suppression of the Civil Disobedience observed, " by seizing these buildings the spread of the movement in towns and villages was, to a large extent stopped...The power to seize the funds has also been useful...The mere knowledge that Government have power to seize the funds of unlawful associations has, we are informed had the effect of making people less ready to contribute towards the association.<sup>1</sup>"

The same year the Government of India found itself in a position to secure the passage of Bengal Criminal Law (Amendment) Act 1932, mainly because the Congress (which formed a nucleus of opposition to Government in the Legislature and particularly in the Lower Chamber) was busy outside in organising the Civil disobedience. The object of the Act was to eradicate terrorism from Bengal. Arrest without warrant, transfer of prisoners to Detention Camps outside Bengal, and the use of evidence recorded previously (by a Magistrate) by the Commissioners if in their opinion the witness was dead or incapable of appearing before them were few of the most abnoxious features of the Act. As passed in 1932, by both Houses of the Indian Legislature, it was a temporary measure to remain in force for three years. It was due to expire on 30th October, 1935. The responsibility for putting the measure permanently on the statute book in 1934 was not of the Council of State, but was that of the Legislative Assembly

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1. C.S. Debates, 12th December, 1932, p 336.

which shared the views of the Government of India (and of the Legislative Council of Bengal which had passed it by 61 votes to 15) and to whom the Bill was first referred for approval successfully by the Government of India.<sup>1</sup> The Council again acted on the principal not to interfere with the joint decision of the Government and Lower Chamber.

The Government of Assam was aware of the existence of a section of the Bengal Revolutionary Party in certain districts of Assam. There were reasons to believe that a number of serious crimes which had occurred in Assam were the work of that revolutionary party. These included the Chandpur and Itakola mail robberies, the Shamsheernagar Railway Station mail decoity and the Sanaru rail decoity. The Home member of Assam Government, Maulvi Sir Mohammad Saadullah, while proposing a Bill on the lines of Bengal Criminal Law Amendment Act, in the Provincial Legislative Council observed, " I have been in charge of the Department of Law and Order since 1929 and have resisted the proposals of the Police and the district officers to supplement the ordinary criminal law. But the information now placed before the Government clearly proves the existence of many organisations within the province with the avowed policy to overthrow constituted government by means of force and violence. In the public interest I cannot divulge either the quantum or quality of evidence that

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1. C.S. Debates Official Report, 16th August, 1934, pp 236-252.



Government possesses, but I can assure the House that on the material which were placed before us, my Hon'ble Colleagues, European and Indian, the Government as a whole, both the reserved and the transferred halves, have come to the unanimous conclusion that Government must possess powers ready for use for a dealing with future emergencies. Thus with a view to uproot the common menace - a menace alike to the public and to the Government - Government have placed this Bill for consideration by the Hon'ble members.<sup>1</sup> Thus again being fully assured of the necessity of law both the Legislative Assembly and the Council of State approved the Bill, known as the Assam Criminal Law (Supplementary) Act, 1934.

The Criminal Law (Amendment) Act, 1938, contained certain provisions for preventing the dissuasion from enlistment in the Defence forces of the country. During the past 18 months the attention of the Government was being drawn to a very considerable number of public speeches, principally in the Punjab, dissuading persons from joining the Defence Forces or inciting the would be recruits to commit the act of mutiny and insubordination. Since then in a further period of eight months, 103 similar cases were reported from other provinces in a period of 8 months. In the Punjab alone, according to official information no less than 71 public meetings were arranged for that purpose and 115 anti-<sup>2</sup> recruitment speeches were made in a period of 9 months in 1937.

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1. For details see C.S. Debates Official Report, 20th Aug., 1934, pp 308-323.
  2. C.S. Debates Official Report, 8th Sept., 1938, pp 112-113.

Rightly or wrongly, it was the Indian National Congress which was directly concerned with that propaganda as the official historian of the Congress confessed saying " what the Congress had in mind was not that it could avert the war-it looked as though the very gods on high would not even think of attempting such an undertaking but that it desired to create public opinion against a possible war which would be a war of India and which for ought the Congress knew might work untold havoc against the interests of India."<sup>1</sup>

The foreign Secretary of the All India Congress Committee, in the Congress Bulletin wrote, " Blockade of recruitment and killing of recruitment is the aim of the Congress, that they have been doing it peacefully for the last so many months and the time has now come that they must kill it. The motive for this legislation is said to be two reasons, our peace movement ( i.e. our anti-recruitment movement). The anti-recruitment movement is a peace movement, because it asks the people to be peaceful and not go into the army and fight. The anti-recruitment movement has been very effective and has struck cold terror into the hearts of Britain...you must<sup>2</sup> render the army thoroughly useless for purposes of defence."

The Leader of the Muslim League Mr. M.A.Jinnah supporting the Bill in the Legislative Assembly observed: " Therefore, having considered it from all points of view, I feel and my party feels that we shall be doing the greatest harm to our people under the conditions as they exist today to allow as it is threatened to do a movement, an organised movement, an agitation to instigate acts

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1. Pattabhaia Sitaramayya - History of the Indian National Congress, Vol. II, p 86.

2. Quoted by Sir A.P.Patro C.S.Debates Official Report, 8th September, 1938, p 133.



of mutiny and insubordination. Well, Sir, I regret I am unable to subscribe to that view, and I hope that one day perhaps my friends will realise that I have acted with the same motives as they claim for themselves and that I have done service to the interests of India.<sup>1</sup> Thus the responsibility for providing the Government with powers to suppress the anti-recruitment movement of the Indian National Congress lies primarily on the shoulders of the Legislative Assembly which passed the Bill first. When it came to the Council of State, the motion for consideration was adopted by 26 votes to 8 and no division was demanded at the passing stage of the Bill.<sup>2</sup>

The Defence of India Act 1939, was a further blow to the Civil liberties of the Indian people. The party position in the Legislative Assembly in 1939 rendered it possible for the Government of India to secure the the passage of the Bill through it. The Congress occupied 19 seats, the Nationalist Party 11, the Muslim League officials and nominated non-officials and Europeans — all combined had a thumping majority against the 30 members who were in opposition to the measure and among whom the Congress members abstained from its meetings throughout the war years, because the Congress had ordered the boycott of legislatures, and the ban was practically never lifted except on one occasion in the

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1. Recent speeches and writings of Mr. M.A. Jinnah, Edt., by S. Jamil Ahmad, p 79.

2. C.S. Debates Official Report, 8th September, 1938, pp 166-170.

autumn of 1940 when the High Command relaxed it to oppose the passage of Supplementary Finance Bill that year.<sup>1</sup> The Bill was introduced in the Legislative Assembly on the 5th of September. The House was full of supporters except the 11 members of the Congress Nationalist Party of the Assembly. The House was in such a hurry that the Select Committee to which the Bill was referred submitted its report in a day and the Assembly passed it on September 17th without a division.<sup>2</sup> In the Council of State it was debated for three days only and was passed again without a division.<sup>3</sup>

The Act was again amended in 1940, with a view to further extending the powers of the executive. The discussion in the Council hedged round the provision of preventing of the prosecution of purposes likely to prejudice His Majesty's relations with foreign powers or to incite feelings of hatred and enmity between different classes of His Majesty's subjects; and the prosecution of any purposes likely to prejudice the tranquillity of the tribal areas as it was deliterious in the opinion of the Government and was therefore to be subjected to like measures of prevention. The most interesting feature of the debate was that nearly all the parties, including those who supported the Government e.g. Muslim League Assembly Party, vehemently criticised the modes operandi of the Act since 1939.<sup>4</sup> The Bill was

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1. R. Conpland: Indian Politics, 1936-42, p 232
  2. Legislative Assembly Debates Official Report, Vol. V, No.4, pp 279-280.
  3. E. C. S. Debates Official Report, 1939, 18th to 20th September.
  4. Legislative Assembly Debates Official Report, 1st April, 1940. pp 2031-2049.



introduced in the Assembly on the 1st of April and was passed by it on the 2nd.<sup>1</sup> In the Council of State, the measure took also one day to pass.<sup>2</sup> In the Legislative Assembly, only the Nationalist party under Mr. M.S. Aney recorded their vote against the measure which was passed by 51 votes to 8.<sup>3</sup> Thus the measure was passed by local and special interests represented in both the Chambers.

Though we have mentioned a few most outstanding cases in which the two Houses of the Indian Legislature reached the same conclusions with regard to measures of law and order, but it is a fact that such area of agreement between the Council of State the Legislative Assembly was much wider than that of disagreement. The number of occasions on which the decisions of the two House on such matters came into conflict with one another was four during a period of 24 years of the working of the Act of 1919, was indeed very meagre in comparison with the number of recorded agreements. But on occasions when such conflicts arose, it is not easy to conclude that the Council of State was always in the wrong. Nor it was an exclusive feature of bi-cameral system in India, as will be shown later.

Councils Role as a mediating Chamber between the Government and the Legislative Assembly.

One of the novel features of the working of the Council

of State, which has been lost sight of by its critics generally is the conciliatory role that it played successfully whenever an

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1. Legislative Assembly Debates Official Report, 1st April, 1940, pp 2031-2049.
  2. C.S. Debates Official Report, 3rd April, 1940, p
  3. Legislative Assembly Debates Official Report, 1st April, 1940, pp 2031-2049.

opportunity was afforded. Several legislative proposals which were amended by recalcitrant legislative Assembly in a <sup>way</sup> ~~very~~ unacceptable to the Government on their reference to the Council of State, were amended according to the wishes of the Government. In the meantime wiser counsels prevailed and the fury of the moment passed, with the result that on further reference of those measures to the Assembly, they were accepted as amended by the Council. Though the occasions on which the Council acted in this capacity were few, but nevertheless were important.

The first opportunity of displaying this feature of its working arose as early as 1925 when the Finance Bill of that year was introduced in the Legislative Assembly on March the 16th. The Swarajist utilised the opportunity to raise a political discussion and Mr. V.J. Patel opposed the consideration of the Bill. The Independents while expressing their general dissatisfaction with the policy pursued by Government refused to support the motion as in their opinion it tended to weaken the constitutional protest already made in connection with the demands for grants. The motion of consideration was therefore carried by 76 votes as against 40. The Swarajists made motions for the reduction of Salt tax and ultimately succeeded in bringing down the rate from Rs. 1/4/- to Rs. 1/- by 61 votes as against 56. Motions to oppose the proposed reduction in the Petrol Duty and to reduce postal rates were defeated by Government with the actual support of Independents. The upshot of the whole discussion was that on March 18th the Legislative Assembly passed the Finance



Bill as proposed by the Government except with the reduction in the salt duty. The Bill was then laid before the Council of State. On March 20th it was discussed in the Council and the Official amendment restoring the salt duty to its original form was carried. In the course of the debate on Finance Bill, Sir Basil Blacket told the Council of his Government's decision to devote Rs 50 lacs out of their estimated surplus of Rs. 74 lacs to making non-recurring grants to four provinces of Bombay, Burma, C.P. and Assam for one year only without prejudice to the future disposition of the surplus. He referred to his announcement made in the Legislative Assembly that if <sup>the</sup> a Legislature decided to reduce the salt tax, the offer could not materialise. When the Bill was being discussed in the Council of State several liberals condemned the action of the Assembly which deprived the Provinces of the subsidy which were to go to the support of nation building departments. Some provincial Legislatures, by motions of adjournment to consider the matter, showed that how seriously they regarded the decision of Legislative Assembly.

The Council of State<sup>1</sup> was thus reflecting a very large element of responsible opinion when it accepted the motion of Government to restore the salt tax to the figure of Rs. 1/4/- by 35 votes against 4.<sup>1</sup>

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1. India in 1924-25, p 142.

On the 21st March the Finance Bill again went to the Assembly. Sir Basil Blacket 'warned the House that the effect of the repetition of the previous vote would be a substantial reduction in the proposed remission of Provincial Contributions.' It was, however, after a heated debate that the Assembly came to its senses and accepted by 70 votes against 50, the amendment of the Council of State!

Another occasion arose in 1927 again on the Finance Bill. The amendment moved by the Swarajist members to refer the Bill to a Select Committee was negatived without a division in the Legislative Assembly. To clause (2) of the Bill containing provisions for salt tax which again stood at the figure of Rs. 1/4/- per maund, an effective amendment was moved by a Swarajist member lowering the rate to exactly half of the proposed figure. This caused the Government a loss of revenue of about 312 lacs of rupees. The amendment was declared carried by 50 votes as against 48. The amend<sup>ed</sup> Bill was then submitted to the Council of State. The 'Finance Member regreted the action of the Legislative Assembly in depriving the Provinces of shadowy relief through remissions in their contributions, which was made impossible for the Government of India to continue because of the reduction in the rate of salt tax. Most of the members of the Council of State again protested against the hasty and inopportune decision



of the Legislative Assembly. The Council passed the amendment proposed by the Government restoring the rate of salt tax to its original figure. The Bill, thus amended was then returned to the Assembly and was passed there by 52 votes against 41.<sup>1</sup>

The same story was repeated with regard to payment of wages Bill which came for amendment before the Indian Legislature in 1937. Certain amendments were affected by the Council of State at the request of Government, when the Bill went back to the Assembly it accepted those amendments.<sup>2</sup> Similarly in case of Hindu Women's right to property Bill 1928 as already referred, the Council of State after redrafting it, sent it to the Sister Chamber and thereby removed the defects of poor drafting objected to by the Government.

The same was the case with the Finance Bill of 1921 which proposed an additional taxation expected to yield Rs 1,917 lacs. This was reduced by the Assembly to Rs. 1, 832 lacs and finally settled at 1,733 lacs after discussion in the Council of State and further discussion in the Legislative Assembly.<sup>3</sup>

Similarly by the Finance Bill of 1922 Government expected to raise an additional revenue of Rs 2,905 lacs. The Assembly rejected the additional salt tax ( Rs 430 lacs ) and the additional Import Duty on machinery, Cotton manufactures and excise duty on Cotton ( Rs. 526 ) lacs. The matter was finally decided

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1. Material and Moral Progress of India, 1927-28, pp 85-86.
  2. Referred to by Mr. P.M.Sapru, C.S. Debates Official Report 30th March, 1937, p 537.
  3. Memoranda submitted to the Indian statutory Commission by the Government of India, p 57.

between the Government of India and Legislative Assembly by the intervention of the Council of State.<sup>1</sup> This role of the Council can be further multiplied by other examples. While criticising the application of the certification by the Governor General to the Finance Bill of 1937, Mr. P.N.Sapru observed, " Well, Sir, the procedure just outlined by me may be subjected to the criticism that it is dilatory and cumbersome. But, Sir, on reflection I think the House will agree with me that a few days delay would not have mattered a very much and in any case it would have been open to less objection because it would have been less autocratic and more in harmony with the Principles which ought to guide a Government which professes to have discarded the methods of militarism and autocracy."<sup>2</sup>

Certificated 0  
Legislation 0  
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It was this category of legislation on the basis of which the Council of State was vehemently criticised both by its own members and by the Press. It was nearly always presumed by the critics that whenever a Bill was rejected by the Lower Chamber and came in a certified form to the Council of State, the action of the former body was always correct and that of the Council was always in the wrong in passing such measures. Though it cannot be denied that on occasions, the Council of State's action was largely influenced by the presence of effective official bloc and so it was really in the wrong. But to say that the Lower Chamber

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1. Memoranda submitted to the Indian statutory Commission by the Government of India, p 57-58.

2. C.S. Debates, Official Report, 30th March, 1937, p 537.



always acted in the right direction will be equally wrong.

On the other hand the one consideration that loomed large in the deliberations of the Council of State was the merit of the measure concerned. The fact that it was only on fourteen occasions on which the power of certification was convoked and the Council of State came into conflict with the Lower Chamber as against hundreds of occasions on which it said ditto to the decisions reached in the latter, in itself proves that the Council was not fond of snatching the authority and challenging the decisions of the more popular House.

The first occasion on which the Council of State reversed the decision of the Assembly on a Certified Bill was its verdict on the Indian States Protection Against Disaffection Bill of 1922 when the Assembly refused leave to introduce the Bill at the initial stage.<sup>1</sup>

The Bill, as the officiating Political Secretary Mr. J.P. Thompson told the Council, aimed at preventing the dissemination by means of books, newspapers and other documents of matter calculated to bring into hatred or contempt or to incite disaffection against Princes or Chiefs of States in India or the Government and administration established in such states. Before passing the Bill the Council wanted to be clarified on two points. First of all that the pledges with the Princes did really exist and secondly that the Princes were right in appealing to those Pledges.

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1. Memoranda submitted to the Indian Statutory Commission by Government of India, p 41.

It was a fact that in the year ending May, 1922, there were not less than 170 attacks made on Princes and their administrations in the Public Press. Of these 23 were personal attacks, some of them very gross, on the Chiefs themselves and more than 100 attacks on the acts of their administrations.<sup>1</sup> The Government of India was therefore bound, as any international person ought to be, to check that sort of criticism and to fulfil the treaties in good faith. The Chamber of Princes also passed a resolution demanding from the Government of India, in view of the facts just narrated, the protection which the Bill sought them to give.<sup>2</sup>

The Bill was supported in the Council not only by the nominated members, but also by men of Rai Bahadur Lala Ram Saran Das standing who was to become later, the exalted leader of opposition party of the Council of State. In view of these facts, it may be safely concluded that the Council of State was right in assenting to the Bill.<sup>3</sup>

The Second occasion that arose in the life of the first Council of State was the rejection by the Legislative Assembly of the annual Finance Bill, 1923, and its subsequent passage by the Council of State. We leave it to be discussed at a later stage.

Chronologically the third occasion on which the same story was repeated by the two chambers of the Indian Legislature was again a matter concerning the Law and Order situation of the

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1. Figures provided by Mr. J.P.Thompson to the Council of State vide Debates Official Report, 26th September, 1922, p 483.
  2. C.S.Debates Official Report, 26th September, 1922, pp 500-501.
  3. Ibid, pp 519-20.



country. In October, 1924, the Governor General had found it necessary to promulgate the Bengal Criminal Law (Amendment) Ordinance to <sup>deal</sup> with the Criminal and revolutionary conspiracy in Bengal. The ordinance had to remain in force for six months. On the expiry of that term the provisions of the Ordinance were continued by the Governor of Bengal under section 72(E) of the Government of India Act. The provisions which were ultravires of the local Legislatures because of their application outside the Province and their relation to the Powers of High Court, were proposed to be enacted in the Indian Legislature in that Bill.<sup>1</sup> The Assembly to which the said Bill was proposed adjourned for its summer recess on September, 1924 and the ordinance was promulgated on 25th of October.<sup>2</sup> Tracing the History of the measure since 1920 and by interconnecting several violent violation of the Law and order, he conclusively proved that all those actions were links of a single chain spread to overthrow the constituted Government of the country. Sir A.P. Muddiman told the Assembly that in 1923, a conspiracy was hatched to murder Mr. Tagart, Police Commissioner of Calcutta. In the same year there was decoity with a double murder in Kona near Howrah in which pistols were freely used. Thereafter Ultadingi Post Office was looted. On the 30th July, same year a robbery with murder took place in Gorpur road in Calcutta. Then there was the murder of Sankari

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1. Memoranda submitted to the Indian Statutory Commission by the Government of India, p 40.
  2. Legislative Assembly Official Report, 28th January, 1925, p 400.

Tola's Post Master. Shortly after that incidence, a conspiracy was unearthed at Alipur, in which case it is true that all the accused were acquitted. Then in December another robbery was committed at Chittagong in which 17,000 rupees were looted by the robbers. A sub-Inspector of Police deputed to inquire the case was shot dead. In January, 1924, Mr. Dey, an innocent citizen of Calcutta was injured to which he succumbed. In March the Police unearthed a bomb factory in Calcutta. A youth was seriously injured in a bomb explosion at Faridpur, in July a man was arrested with revolver, who was believed to be a member of the gang. In July again, the 'Red Bengal' Leaflet was distributed which read: " The Public is hereby informed that the Bengal revolutionary party has passed a resolution of a campaign of ruthless assassination of Police Officers. Anyone in any way actively or passively putting obstruction to our comrade when in action or retiring; or by helping the Government of this country as by taking briefs from the Government or giving evidence in favour of prosecution etc. when any such Comrade is in the hands of Government or inciting the Government to take repressive measures shall be considered as doing acts highly prejudicial to the best interests of the country and from the moment any such action is taken by anyone he shall be considered as condemned by us to be despatched forthwith.<sup>1</sup> Then on the 22nd August a bomb exploded at Mirzapur street. One of the accused who turned as the Kings evidence, was murdered on 29th of September,

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1. Legislative Assembly Official Report, 28th January, 1925, p 408



the day on which the Assembly rose. This alarmed the Government of India. An Ordinance had to be promulgated while the Legislature was in recess and naturally it could not be consulted<sup>1</sup> at the moment.

Referring to the arrest of three swarajist members of Bengal Legislative Council under the Ordinance, the Swarajist Leader in the Assembly expressed the doubt that the Bill if passed was to be applied to the Swarajists. In answer to which Sir Muddimen quoted Lord Lytton the Governor of Bengal saying: "If our object had been what he asserts, we would have arrested not three Swarajists members of the Council but 40 and endeavoured to remove the obstruction which he thought is so embarrassing."<sup>2</sup>

The Leader of the Swarajist Party in the Legislative Assembly Pandit Moti Lal Nehru, himself confessed to the existence of the anarchic movement in Bengal and condemned the activities of its members, but in the same breath he denied the necessity of the Act which was quite illogical.<sup>3</sup> However, the Swarajists and Independents joined together to defeat the measure which was certified and approved by the Council of State,<sup>4</sup> whose sense of realism and composition were responsible for granting the powers to Government to deal with terrorism which was equally dangerous to vested interests which were specially represented in the

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1. Legislative Assembly Debates Official Report 28th January, 1925, pp 402-408.

2. Ibid, p 398.

3. Ibid, p 831.

4. Memoranda submitted to the Indian Statutory Commission, p 42.

Council of State - and to the peaceful moral and material progress of the nation.

The next occasion on which the Council of State passed the Criminal Law (Amendment) Bill of 1935, which came to it in the Certified Form, was really inopportune. The Bill did not only contain Provisions of the Indian Criminal Law (Amendment) Act, 1932, which was due to expire in December, 1935, but of another temporary measure known as the Press (Emergency) Act of 1931. Both the Legislative Assembly and the Council of State had passed the parent Bills of 1931 and 1932, for temporary duration. The proper course for the Government as pointed out by Sir Phiroze Sethna was to ask for the extension to which in his opinion<sup>1</sup> the Legislative Assembly would have subscribed readily. The course adopted by the Government in certifying the Bill was really unwarranted mainly because the other possible alternative, which had greater chances of success and would have been acceptable to the Assembly was not explored. Similarly, the Council did not 'spare the trouble of being the Pall bearer of such<sup>2</sup> dead Bills.' Mr. Jagdish Chandra Banerjee on this occasion explained in a very concise manner the role which the Council ought to have played saying, "Assume for a moment, that the Assembly was wrong in rejecting the Bill at the consideration stage...was it necessary for Government to have introduced this Bill, the identical measure and not listen to the more moderate criticism

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1. C.S. Debates Official Report, 23rd September, 1935, p 249.

2. Jagdish Chandra Banerjee: Speaking on the Bill - C.S. Debates, 23rd September, 1935, p 263.



of the more friendly critics? I am emphasizing this aspect of the matter as the House is a revising Chamber and the question before the House really is whether in view of the procedure, Government have adopted, whether in view of all the circumstances of the case, the House should support the Government and revise what the other Chamber has done? The House is entitled to ask, has any response been shown by Government to the popular views as voiced by the more moderate critics of Government in the other House? In a struggle between the Government and the Other House in a Constitution like ours we ought not to support Government untill we feel convinced that Government has shown a spirit of reasonableness, untill we feel convinced that Government has shown a spirit of responsiveness, towards at any rate, the more moderate critics in the other place." <sup>1</sup> Rai Bahadur Lala Ram Saran Das, leader of the opposition announced the decision of his party of refusing to " share responsibility with His Excellency the Viceroy for a Bill, in the shaping of which we can have no hand." <sup>2</sup> The Bill was, however, carried by 35 votes to 10. <sup>3</sup>

#### Financial Deadlocks

The first crisis over the annual Finance Bill arose in 1923, when the first Legislative Assembly on the eve of its dissolution rejected the Bill by refusing it leave to be introduced. The bone of contention was

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1. C.S. Debates Official Report, 23rd September, 1935, p 265.
  2. Ibid, p 285.
  3. Ibid, p 360.

the enhanced <sup>salt</sup> ~~salt~~ duty. The Finance Member had asked the Assembly to secure equilibrium by enhancing the duty on salt and thus to cover the deficits of the last five years which were threatening the credit of India both at home and abroad. And while there was an unlimited field in the Country for capital expenditure on new development, India had spent nearly 100 crores out of her capital in the last five years solely in financing deficits and had thereby diminished the resources available for her own development. But over and above these considerations of development there was the supreme necessity to balance the Budget. Sir Basil Blacket, therefore, requested the Assembly to double the duty from  $1/4$  to  $2/8$ <sup>1</sup>. In the course of certification Lord Reading stated that in view of the present accumulated deficit, he considered it essential in the interests of India to balance the Budget. He pointed out that the conditions in 1923 differed from those of 1922. Last year when the Assembly had refused to agree to the salt tax, the Government of India had been deeply impressed first with the necessity of carrying out retrenchment as a preliminary to further taxation and also by the fact that high prices might have caused enhanced salt tax to press the poor heavily. But in 1923 the possibilities of retrenchment being fully taken into consideration, the Government was unable to allow any further delay; and the circumstances of the year were such in his opinion as to render the enhancement

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1. India in 1922-23, p 115.



of the salt tax easier for the poor on account of the decline in the price of food stuffs in relation to wages. Statistics showed that the amount spent on salt represented only  $\frac{2}{5}$ th of one percent of their expenditure. The Governor General therefore concluded that the increase in salt must have infinitesimal effect at such a period and therefore he felt himself bound to certify the Bill in the best interests of India.<sup>1</sup>

But the Viceroy in calculating these estimates of incidence forgot that falling prices of food stuffs were causing heavy strain on the villagers and small cultivators who formed 50 percent of the Indian population and were numerically the largest proportion who had to pay this obnoxious salt tax. If however the balanced budget was a dire necessity for Government there were other sources to get it. As suggested by some moderate members of the moderate Legislative Assembly of 1923, imposition of an import duty on silver, enhanced customs duties and increase in the income tax figure would have yielded the required surplus. The Government and the Council of State took really a wrong course in certifying and passing the Bill respectively in face of popular opposition without exploring the possibilities of a compromise.

The Finance Bill of 1924, on which the Two Houses reached varying conclusions, was to be the last certified measure of its type for atleast the next ten years. Between the passage of Finance

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1. India in 1922-23, pp 115-116.

Bill of 1923 and the certification of this Bill a great political change took place in the country which affected the complexion of the newly elected Second Assembly. Following the Swarajist decision of the Council entry to wreck the constitution from within and the liberals failure to get the Finance Bill amended accompanied with the announcement of the British Government's decision of the Kenya Question aggravated the Political Credit of the Liberals throughout the country. Thus discouraged, dis-united liberals entered the elections against their Swarajist Opponents who practically wiped them out of the Assembly. By February 6 a coalition of some 70 members was formed in the Legislative Assembly who agreed that if Government made no satisfactory response to a resolution demanding immediate constitutional progress, a consistent policy of obstruction would be followed by the combined group known as the Nationalist Party.

In that atmosphere, when the Finance Bill was introduced on 17th March, Pandit Madan Mohan Malviya a member of the new party opposed the introduction of the Finance Bill on the general grounds of Policy. The discipline of the Nationalist Party was strong enough to secure the rejection of leave to introduce by 60 votes against 57.<sup>2</sup>

The treatment received by the Bill in the Council of State was very different. Not only did it pass the measure without division at any stage,<sup>1</sup> but some of its most prominent elected

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1. *Ibid* in 1923-24, p 275.

2. *Ibid*



member emphatically dissociated themselves from and did cast as-  
persions on the manner the Bill was dealt with by the Assembly.<sup>1</sup>  
The Governor General in his statement of 28th March, beside giving  
his reasons to apply the procedure of section 67 B of the Govern-  
ment of India Act, clearly spoke of the reduced duty on Salt from  
Rs. 2/8/- to Rs. 1/4/-<sup>2</sup> This change of attitude towards a tax  
which was so hotly debated and negatived by the Assembly last  
year, and to which no peculiar opposition was shown this year  
was an Act of repentance on behalf of Government. As against  
the Assembly, the Council discussed the measure on its merits  
and its acquiescence in the proposals was a decidedly progressive  
step. The mere fact of its opposition to the Assembly in this  
respect is not a sufficient cause of putting blame on it. On the  
other hand its sense of response to the offer made by the Govern-  
ment in reducing the notorious increase of the Salt tax should be  
appreciated.

During the coming ten years the Nationalist Party of the  
Assembly received heavy blows from the Independents who drifted  
farther way from the wrecking policy of Swarajists. An Indepen-  
dent Party was formed in the Lower House in 1923, which was  
ready to join hands with Swarajists in protesting against the  
Policies of Government in their different aspects. They were  
ready to condemn the repressive legislation, to support the

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1. India in 1923-24, p 281.

2. Ibid, Appendix 4, p 312.

claim for political advancement and to criticise the conduct of administration but not to oppose Government in season and out of season. The emergence of this separate group resulted in the smooth passage of official measures, because the Government was not able to expect support on controversial measures from either of the two groups.<sup>1</sup> Thus when in 1925 the Finance Bill was taken up on March 16th, the independents refused to support the Swarajist motion for opposing the consideration of the Bill. Similarly motions to oppose the proposed reduction in the petrol duty and to reduce postal rates were defeated by the Government with the actual support of Independents. This reduced salt rate was later restored, as has already been mentioned, by the Council of State and agreed to by the Legislative Assembly. Indeed it was this interplay of groups within the Assembly which restricted the use of certification of Finance measures and their passage by the Council of State alone till 1935.

The Indian National Congress had decided to contest the forthcoming elections of 1934 after a long absence from the Assembly. It entered the elections 'as the only organisation<sup>2</sup> contesting them on an All India basis.' The Party position in the Assembly was, Congress 44, Congress Nationalists 11, Independents 22, Europeans 11, Officials 13, Nominated non-officials 13.<sup>3</sup>

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1. India in 1924-25, pp 333-34.

2. R. Polm Dutt India Today, p 480.

3. R. Compland: Indian Politics, 1936-42, p 9.



The Congress Party, with the actual support of other parties in the Legislature succeeded in throwing out the Finance Bill of 1935 to impress upon the Government its disagreement with the general political and administrative policies of the Government of India. The Finance Bill of 1936 was amended primarily because the Nationalist opinion was not only dissatisfied but vehemently opposed to the introduction of new Reforms, particularly to its central part. These amendments embodied three principles which were unacceptable to Government (1) Financing the reconstruction of Quetta not from the Central Revenue but from the Capital funds (2) Excission of salt duty (3) Reduction in the Post Card Rates. The independents now known as the Central Muslim Party under the leadership of Mr. M.A. Jinnah supported the amendment.<sup>1</sup> The Government refused to surrender Rs 8 crores and 75 lacs by the excission of salt duty and 50 lacs by the reduction in the price of post card.<sup>2</sup> After being certified the Bill was again referred to the Legislative Assembly which again turned it down. Sir Cowasji Jehangir observed that, " it was the deliberate intention of the authors of the Constitution under which we work to give to the opposition the right and the privilege of changing the Budget. I did not support the salt cut and do ask that that should not be made an excuse for certifying every thing that we suggested."<sup>3</sup>

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1. Legislative Assembly Official Report, 25th March, 1936, pp 3265-3282.

2. Ibid, p 3268.

3. Ibid, p 3278.

That the Council of State did not adopt the role outlined on a previous occasion is really regrettable, but it is also to be taken into consideration that it was not allowed to do so, because section 67 (b) provided that no amendments could be moved to a certified Bill.

In 1937, the Finance Bill was again certified and sent to the Council of State. This time the dispute between the Governor General in Council and the Legislative Assembly was not merely political, the controversy shifted from a constitutional to real economic issues involved in the Bill. The main burden of criticism was upon the enhanced Sugar Duty and the imposition of import duty on Silver, the maintenance of Salt tax and price of the post card. The salt tax and the price of post card had since long been made political issues by the Congress and Independents respectively for their political purposes. But the enhanced sugar duty and the Import duty on silver were issues which invited serious consideration by themselves. The protection given to the sugar industry was virtually in danger by the operation of this Bill.<sup>1</sup>

When the Bill came to the Council of State in a certified form trenchant criticism of Governor General's action was made by the elected members. It did not throw light on the dark aspects of possible economic consequences of the operation of the Bill only, but also gave the most vivid description of the tight corner in which the Council was put. The Finance Bills of 1925, 26 and 27 had been amended by the Legislative Assembly but were restored to their original form by the Council of State without invoking the power of certification. Recently, the payment of

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1. Legislative Assembly Official Report, 12th March, 1937, pp 1788-1867 and 13th March, 1937, pp 1897-2233.



wages Bill was restored to its original form by the Council of State to which the concurrence of the Legislative Assembly was sought and obtained. But this time the power of the Council was taken away by the application of section 67B. The leader of the Congress party Mr. Ramadas Pantulu referring to this humiliating position observed, " It is certainly a very humiliating position for this House to be put in. The other House at least had the satisfaction of rejecting the Finance Bill in the certified form. But in this House we shall even not have the moral satisfaction of having done our duty to the electorate by throwing out a Bill which is unwanted and which is not acceptable. And we have to pass this Bill whether we like it or not" because in " this House they have a standing majority and can pass any thing they like. They, therefore, do not show the consideration which even in debates the Government. Members show in the other House, just because they cannot get anything done by this House. I think, they pay very little respect or consideration to what we on this side say. Therefore, we are in the unfortunate position, as Mr. Nixon put it, of having to face this Bill." Rai Bahadur Lala Ram Saran Das, the Leader of the Progressive Party appealing to the President remarked: " I must say that when we get a certified Bill it means that the Bill has to go through, as unfortunately the elected members alone cannot carry any measure here.

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1. C.S. Debates Official Report, 30th March, 1937, p 544 and 548.

So it has become a habit for us to speak in the wilderness and the measure goes through...Sir, I would request you as the Custodian of the dignity of this Chamber to see that this Chamber is allowed to make its voice heard and that whenever Government likes to come to a decision that decision should be arrived at after hearing what this House has to say in the matter." <sup>1</sup> Haji Syed Mohammad Hossain described the humerous position of elected members in these words. " Today we are just like in an empty hall before <sup>69</sup>evoking glass. Our speeches make no impression. The Honourable Members on the other side rely more on the number of their votes than their reasoning. " <sup>2</sup>

Only nine members participated in the debate of whom only <sup>3</sup>2 official and one nominated non-official supported the Bill. When a division on the motion for consideration was recorded 27 voted for and 15 against the motion, including nearly all elected members. The Bill was ultimately passed by 26 votes to <sup>3</sup>15.

The Finance Bill of 1938 was rejected by the Assembly as a protest against the encroachment by Government of their conventional right to discuss and vote " the one tenth of one percent of the whole defence expenditure. " as the item was removed from the list of voteable demands for grants. Such action was justified by the new Government of India Act which had envisaged this

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1. C.S. Debates Official Report 30th March, 1937, p 556

2. Ibid, 1937, p 553.

3. Ibid, pp 529-573.

4. Ibid, p 573-74 and 31st March, pp 617-618.



exclusion. But looking into the section 67A(3) of the Act of 1919 relating to the powers of the Governor General in Council were in 'Pari Materia' the same as those contained in the IX schedule of the Act of 1935. The only change that the later Act brought about was that under the Act of 1919 the sub-head of defence numbered V and in that of 1935 the sub-head was VI. It was however, true that there existed constitutional power to do what the Government of India had purported to do since 1919. But the question was the exercise of the Power, which, though given, had been in abeyance since 1921, i.e. for a period of 17 years. The Governor General was competent to maintain what had grown to be ' a salutary, useful and important convention,'<sup>1</sup> in the Legislative Assembly that House could express an opinion by a direct vote on a small portion of Defence Expenditure, for the purpose of telling the Government the views of the elected members of the House, the tax payers' representatives on their policy under these two heads during year in question.<sup>2</sup> Mr. Bholabhai-Deasai, after consultation with the leaders of the Independent parties, told the Government that they have decided not to participate in the discussion on the Budget. Thus without discussion, the votes were recorded on each item which were all against the Government. Thus the Legislative Assembly rejected the Budget clause by clause.<sup>3</sup> As the Assembly had rejected the demands for

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1. Bholabhai J. Desai: speaking on the Budget dated 2nd March, 1938, p 1372.

2. Legislative Assembly Debates 2nd March, 1938, pp 1372.

3. Ibid, 9th March, 1938, pp 1658-59.

grants, which were restored by the Governor General, the House naturally rejected the supply or the Finance Bill at the consideration stage by 69 votes to 48.<sup>1</sup> The Governor General thereupon certified the Bill and again sent it to the Assembly for approval on 10th March, but this time the motion for consideration was rejected by 68 votes to 46.<sup>2</sup>

When the Bill came up before the Council the leader of the Congress and Progressive Parties protested against certification without consulting the Chamber. They announced that they were not going to take part in the Debate and staged a walk out - the first and last in the history of the Council of State. Only two elected members Maharaj Sir Keshwar Singh of Bihar and Mr. R.H. Parker of the Bombay Chamber of Commerce and one nominated non-official Sir A.P. Patro made only formal speeches which were answered by Mr. Nixon, the Finance Secretary. At the moment the President put the motion before the House Mr. Hossain Inam entered the Council Chamber and recorded his vote in the negative. Soon afterwards, the Progressive and Congress Parties came in and demanded a division which was refused by the President on the plea that the procedure adopted by those members was 'undignified'. The episode between the President and the members reached a stage that the President had to adjourn the Council for 15 minutes on the suggestion of the Leader of the House. When the Council resumed, divisions were taken not on the motion of consideration which was already declared passed in the absence of elected members,

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1. Legislative Assembly, 9th March, 1938, pp 1658-59.  
2. Ibid, 10th March, 1938, p 1886.



but on the clause by clause consideration of the Bill and on that the Bill be passed,' both of which were carried by 27 votes to 15.<sup>1</sup> Thus it was not the high handedness of the Council of State over the Legislative Assembly, but that of the Government of India over both the Chambers, which resulted in the passage of the Bill by the Second Chamber.

The Finance Bill of 1939, was again the stumbling block on which the Council was rendered practically incapable to express itself freely. The Bill contained the proposals for doubling the import duty on raw cotton and for widening the field for excise duty on Khandsari Sugar. It also overrode the decisions of the Legislative Assembly on such vital matters as the reduction of the salt duty by 4 annas per maund and the price of the post card to half an anna, both very long standing and popular demands.<sup>2</sup>

The elected members of the Council strongly protested against the use of emergency power of certification every year. Mr. Ramadas Pantulu condemned the Government saying 'That the Government was unable to get its supplies voted in the normal manner in the last five year is also a sad commentary on the way in which the affairs of this country are administered by this Government.'<sup>3</sup> He said to the elected members, 'if we cannot defeat the motion for consideration in this House, it is because it is abnormally over weighted with official and nominated blocs. The best that we

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1. C.S. Debates 22th March, 1939, p 774.

2. Ibid, p 774.

3. Ibid, p 773.

should do, in the opinion of the Congress Party, is that the elected members at least should dissociate themselves from the Bill and vote against the motion for its consideration<sup>1</sup> and this suggestion was accepted by the rank and file of Congress and Progressive parties of the House. Thus in spite of best efforts<sup>2</sup> of elected members the Bill was passed by 27 votes to 15.

The Indian National Congress boycotted the Legislature on the commencement of war. As a result there was a complete harmony of relations between the Government and the Assembly, and consequently the two Houses no longer remained at loggerheads for some time to come. During the prosecution of the war, there occurred only one incident when Congress decided to enter the Legislative Assembly to defeat the Government Finance Bill No.2 of 1940 aimed at meeting the cost of war. It succeeded in getting the motion for consideration rejected by the Assembly with 55 votes to 53<sup>3</sup> after a prolonged and heated debate. On the 20th November, i.e. the next day, the Bill was laid again before Legislative Assembly in a certified form, which repeated the same decision. The Bill came up to the Council on 22nd March and the Government got it passed by the Second Chamber in face<sup>4</sup> of opposition of the Progressive Party. More or less the same story was repeated<sup>as</sup> earlier on the certified Tariff Bill of

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1. C.S. Debates 28th March, 1939, p 774.

2. Ibid, pp 767-797.

3. Legislative Assembly Debates, 19th November, 1940, p 839.  
See also History of Indian National Congress, p 222.

4. C.S. Debates, 22nd November, 1940, p 338



<sup>1</sup>  
1939. The over weighted position of nominated and official bloc was really the most obnoxious factor in the composition of the Council of State in the presence of which it was really no more than a 'Secretariat Conference'<sup>2</sup> but whose frequent passivity or coincidence with elected members on non-certified legislation enabled the Council to play freely the role of a true Second Chamber.

Resolutions,  
Interpollations  
and  
Adjournments.

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The right to move resolutions was perhaps the 'most potent instrument' for impressing on Government the

whishes of the Chambers. Government itself had frequently, for various reasons, found it advisable to move official resolutions. Much of the most numerous class of official resolutions was that of those which arose out of international conventions and conferences. As for example Article 405 of Versailles Treaty required the Government to bring a recommendation on a draft convention before the authority or authorities within whose competence the matter lay for the enactment of Legislation or other action. If on the other hand, the Government did not propose to adhere to a recommendation or a draft convention involving legislation even

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1. The Bill was passed by 28 votes to 10 in the C.S., C.S. Debates 30th March, 1939, pp 806-862.

2. V. Ramadas Pantulu, C.S. Debates, 30th March, 1939, p 809.

then the matter was to be brought before the Legislature and could only be brought by a resolution recommending that the Government should or should not adhere to a particular convention. The latest figures available about official resolutions were computed for the last time in 1932, which show that out of a total of 361 resolutions, the Government moved only 38 in the Council of State. The remaining resolution (323) in number, were all moved by the non-official members of the Council. The same number of official resolutions were discussed in the Legislative Assembly but with different results.

Government had thus made a very limited use of official resolutions, bringing forward in this way either particular questions on which the concurrence of the Chamber was probable, or less frequently, general questions of Constitutional interest on which unofficial opposition was not expected. Accordingly, in the entire life of the upper house, it refused to pass only two resolutions, while the number of failures in the Legislative Assembly was about 30 times. The Council refused to agree to a reduction of the allowances of its members and postponed indefinitely the discussion of the report of the Taxation Enquiry Committee. The resolution regarding the judicial Committee of the Privy Council was first negatived but passed on a later occasion.

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1. C.S. Debates, Vol. II, 1932, pp 54-65.

2. The figures are compiled by the writer on the basis of information contained in the C.S. Debates, Vol. II, 1932.

3. The figures are estimated on the basis of a study of the Proceedings of both the Chambers.

4. Memofanda, p 66.



Non-official resolutions were naturally more numerous. They occupied the Council of State on 323 days upto 1932<sup>1</sup> and for about 100 days from 1932 to 1936.<sup>2</sup> The Council of State, therefore, devoted more of its time to resolutions than the Legislative Assembly, and discussed more questions in this way. It was the Governor General who allotted the time for non-official business. The Council of State got more time for such resolutions because it had less official business and disposed of it more expeditiously.

A survey of the proceedings of the two Chambers reveals that resolutions regarding the economic matters were not so numerous in the Legislative Assembly as in the Council of State. They were to a certain extent moved by expert members of the Council and they seemed to be moved from an appreciation of the possibilities of extending the authority of the Central Legislature.

Upto the year 1932, out of a total of 323 Private resolutions moved in the Council of State, only 36 were<sup>3</sup> <sup>Successfully</sup> initiated by non-officials. The latter included the varying categories ranging from the highly technical questions of Exchange situation, Income-tax assessment, lead poisoning, Remittance transactions between India and other Countries and general exchange operations, ~~m~~oral decorations, Treaty arrangements involving fiscal obligations, separation of accounts of post and Telegraph Offices and

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1. As cited on the previous page.
  2. Figures compiled by the author on the basis of information given by the President of the third C.S. in his farewell address on 17th October, 1936, pp 541-42.
  3. C.S. Debates, Vol. II, 1932, pp 54-65.

Census of Products of British India; to the most controversial political, constitutional and Economic problems of the country.

A brief description of the action taken by Government on resolutions passed by the Council of State will reveal the extent to which they influenced policies of the Government of India in the interest of the Indian nation. For this purpose a note has been appended at the end of the thesis from the authentic information available in that regard. The most numerous class of resolution on which the Government took action was concerned with Commercial and Industrial questions which received little or no attention in the Legislative Assembly in the long period of 25 years and were virtually left to the care of the Council of State.

Motions of  
Adjournment

The use which was made by the Council of the right to call upon Government on a motion for the Adjournment of the House, to explain its policy or conduct of its officers has a curious history. Leave to introduce such motions was frequently sought in the early sessions of the Council, but since 1933, it was never asked for in that Chamber. In the Legislative Assembly on the other hand the position was reverse. In its earlier sessions such motions were rarely moved, but since 1924, recourse to this device became more popular. The Council discussed four motions upto 1933,

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1. C.S. Debates, Official Report, dated 22nd March, 1933, p 383. See also Memoranda submitted to the Indian Statutory Commission by the Government of India, p 73.



while the Legislative Assembly in a comparatively smaller period of 7 years (1921-1927) discussed as many as 12 adjournments with a view to bring pressure upon Government. Apart from the fact that the Council of State being a body of Elder Statesmen, was less concerned with the day to day incidents, it also had a natural contempt for adopting such tactics to harass the Government. The Standing Orders of the Council were also responsible to a certain extent for not making as frequent ~~was~~ use of this privilege as was made by the Lower Chamber. In order to justify a motion of Adjournment the Standing Orders 22 and 54 required the support of 15 members in a House whose total strength was 60; while on the other hand, the required number for the same in the Legislative Assembly was 33 out of a total membership of 144. The result of these facts was that by the time, the third Council of State was dissolved, only 7 such motions were discussed - 4 upto 1933 and 3 since then upto 1936. To the objection that the Council of State discussed such a small number of adjournment motions, no better explanation can be given than that of the President of the Council himself, 'in a premier House like this, it is the quality that counts and not merely volume of work. Quantity has no place in this Chamber. I feel extremely gratified particularly over the small number of adjournment Motions. I compliment the Council for having exercised that power, that privilege, which is given us with so much caution, with so much consideration and with so much moderation. Elsewhere we have noticed hundreds of motions.

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1. Farewell speech by the President of the third C.S. (Debates 17th October, 1936, p 541).

of Adjournment have been made on all and every trivial matter of business, whether they are pertinent to the proceedings of the Council or not. But here you have exercised this privilege with the same circumspection and discrimination which has been displayed by the House of Commons. I particularly refer to this matter because it is a very important and serious matter and I am of the opinion that no Member of the Council is authorised or permitted to take up the time of the Council by moving adjournment motions indiscriminately. The practice which you have adopted is an example to all the Legislatures in India and the way in which you have treated this great privilege and exercised it with such caution commends you to the whole country.<sup>1</sup>

Interpe-  
llations

In the Council of State during the first seven years of its life notice of 3173 questions was<sup>2</sup> given and 2561 were actually asked. The Government of India, in their memoranda remarked that ' volume of questions has not varied appreciably in that period.<sup>3</sup> In the Legislative Assembly on the other hand, the volume of interpellations atonce increased when the Swaraj Party made its appearance in that Chamber. The first Assembly in the three years of its life asked about 13 to hundred questions a day and the number doubled in the Second

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1. Farewell speech by the President of the third C.S. (Debates 17th October, 1936, pp 541-42.
  2. Memoranda , pp 62-63.
  3. Ibid,



and third Assemblies.<sup>1</sup>

In the life of the third Council of State ( the last Official figures about which are available ) notice was given of 1900 question of which the President admitted 1548 only, on various grounds.<sup>2</sup>

The discrepancy in the two Chambers between the number of question put down and asked may be attributed in the first place to the lapse and withdrawal of the questions by members, due mainly to their amalgamation and secondly to their disallowance, by the Presiding Authorities. The first category consisted of 179 questions in the Council of State ( 1921-1928 ) as against 476 in the Legislative Assembly.<sup>3</sup> That such a small number of question were withdrawn by the members of the Council as compared to that of the Lower House, indicates the sense of clarity and responsibility shown by the members of the Council in the matter of putting interpellations.

The number of questions<sup>dis</sup> allowed was 433 in the Council of State as against 2798 in the Lower House. The reply was bluntly refused by the Government in one case only - that is, when the labour required in the Collection of requisite information was deemed to be out of proportion to the results. Objections were also raised in principle to questions affecting the relations of the Indian States with the Governor General in Council.

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1. Memoranda, p 62.

2. C.S. Debates Official Report, 17th October, 1936, p 541.

3. Memoranda, pp 62-63.

Certain questions were objected to and refused by the Government because their subject matter related to public affairs with which the member of Government addressed was not officially concerned or to a matter of administration for which he was not responsible. Several questions were not answered because they were concerned with provincial matters.<sup>1</sup> The number of questions disallowed on each of these basis was not computed by the Government. Nor any official authority had taken pains to compute the figures on the lines of the Memoranda for later years. But whatever information is available clearly shows that the number of questions disallowed or objected on the above grounds by the Government in the Council was far less than in the Assembly.

Attitude of the  
Government and  
of the Lower  
Chamber.

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Both the Chambers of the Indian Legislature under the Act of 1919 had an elected majority, but the electorate

was so framed that the members of the two, were decidedly the representatives of different elements of the Indian Society. Their interests and their temperaments differed. Complete harmony between the two was therefore not expected. Reference has already been made to the 10 Finance Bill and 4 ordinary measures upon which the two Chambers reached different conclusions. This matter of interference with the decisions of the

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1. Memoranda, p 63.



Legislative Assembly, by the Council of State, particularly on Money Bill was one, on which the former Chamber felt or pretended to have felt strongly. Even in the Second Session of the first Assembly notice was given of a resolution affirming three principles - (1) that money bills should be initiated in the Lower Chamber, (2) that they should not be altered by the Council of State; (3) and no Bills should be amended by the Upper Chamber in such way as to increase any change or burden on the taxpayer. The resolution came for discussion in July, 1923. The Government contended there was no warrant in the constitution for the view that the other House could not amend Money Bills. Though the resolution was lost, the practice of Government since then, as earlier had been, to initiate all such Bill in the Legislative Assembly including the important ordinary Bills.

The Council of State retaliated<sup>1</sup> by claiming that it should not be excluded from the grant of demands and that all demands should ~~not~~ be voted in joint session, in 1927. The resolution was however negatived.

As early as 1921, the Council demanded that the Budget should be discussed by it without recording a vote. The Act of 1919 did nowhere prohibit the Council from discussing it, but the standing order § 70 had put a virtual ban on its discussion in the Council. The order being *ultravires* was amended accordingly.<sup>2</sup>

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1. Memoranda, p 81.

2. C.S. Debates, Official Report, 26th and 27th September, 1921, pp 381-462.

But all these incidents worsened the attitude of the Lower Chamber to such an extent that in 1921 the Legislative Assembly unanimously rejected the recommendation of the Council to refer the original procedure code (Amendment) Bill to the Joint Committee of the two Houses. Again in 1926, when the Commerce Member proposed for reference of the Insurance Bill to a Joint Committee, aspersions were cast in the Assembly on the Council of State. The feelings raged so high that the Member concerned had to withdraw the motion. In the case of Finance Bill of 1923, the proposal to refer the Bill was given up because of the opposition it met in the Assembly.<sup>1</sup>

With the Government of India in the former days at least, such a procedure of referring the important Bills to Joint Select Committees counted for much. During the first days of the new reforms in 1921, it referred five Bills to Joint Select Committee of the two Houses.<sup>2</sup> Even the Finance Bill of that year was referred to such a Committee. In the next year six Bills<sup>2</sup> were referred to Joint Select Committees of the two chambers. The advent of Swarajist in the Lower House made no difference and this equanimity of the Government continued. Even in the first Swarajist packed Assembly, every year Bills were referred to Joint Committees.<sup>3</sup> In spite of opposition shown to the official proposal in 1926, two Bills were referred to such Committees in 1927.<sup>4</sup> The last Bill to be referred was the Reserve Bank of India Bill. When the Government of India referred this last Bill, the

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1. Memoranda, p 81.

2. C.S. Debates, 6th March, 1933, p 219.

3. Ibid, p 220.

4. Ibid, p 220.



Finance Member explained the Official Policy upto that moment which was discontinued latter. He put it in the following words " This House (Legislative Assembly) in no way infrings its own rights or gives away any of its own rights in regard to the examination of this Bill when it returns from the Joint Committee, if there has already been a Select Committee on that Bill in another House, a motion for Select Committee in this House deprives the other Chamber (C.S.) of any power of examining this Bill in a Committee. The constitution intentionally gave special representation in the other place to representatives of Commercial and Industrial interests, and it is most desirable that when an opportunity arises of taking advantage of those who have special knowledge, it should be used. Government are unable to accept the suggestion of Mr. Jamnadas Mehta that they should withdraw the motion, and they very much trust that the House will see that in its own interest and in the interest of the country it is desirable that it should be referred to a Committee fully representative of every one in the matter."

A resolution was moved in the Council by Mr. Hossain Imam, requiring reference of Government Bills to Joint Select Committee of the two Chambers, in 1933. It was supported by nearly all the elected members of that Chamber. But the opposition of the Assembly had reached such a stage that the Government members had to oppose the resolution because in their opinion the duty

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1. C.S. Debates 6th March, 1933, pp 220.

of Government was to do its business without giving cause of offence to peoples representatives and without creating situation in which bitterness may be created. This leader of the Government put the position in the following words:

" We, Sir, must not forget that we are a Second Chamber, a revising Chamber, and all that flows from that eminent position of being a revising chamber makes, up our privileges and dignity and also puts limitations on the actual part we can take in moulding the Legislation of the country. Within this limit I assure the House, Sir, that my colleagues who are in the other House will be very glad indeed, to have the opportunity of moving for reference to a Joint Committee of both Houses where they can do it without prejudicing the chances of proceeding peacefully with Legislation."

A suggestion was made in the Council of State that Government Bills should be introduced in that Chamber to which the Governments reply was indicative of its attitude towards the council of State. They were ready to do so provided the course suggested had not <sup>The</sup> possibility of prejudicing the chances of the passage of such measures, which they knew to exist. Such action on the part of Government could be construed by the Lower Chamber that because they had a large proportion of nominated member in the Council, therefore they were trying in a Machiavellian fashion by putting important legislation first before the

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1. C.S. Debates, 6th March, 1933, p 222.



Council. The Government was aware of the fact that the adoption of such course on their part could easily create the feelings of antagonism in the Legislative Assembly.

If we survey the whole problem closely we find to our great satisfaction that the inactivity of Government in those matters was based neither on negligence nor Callousness. ~~Nevertheless~~ it did not show enough regard for the Council because of its experience which had dictated a particular <sup>Care of</sup> action.

Relations with  
the Chair

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The relations of members with the

Presidents remained cordial and the

tradition of dignity of the Second Chamber was maintained throughout the life of the Council of State, by mutual cooperation and regard for each other. Only once in the history of the Council the unpleasantness between the Chair and elected members took place when the certified Finance Bill of 1938 was condemned and walkout was staged by nearly all the elected members of the Council. The conflict that took place on that occasion was so interesting that it essential to reproduce it in full in Appendix of this thesis. However, in the end, the Leader of the opposition party clarified the intentions of those who walked out in the following apologetic language, 'Sir, I wish to state on behalf of my party, that any action taken by us, was by way of protest

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1. C.S. Debates, Official Report, 6th March, 1933, pp 223.

against the action of the Governor General in Council in withholding certain demands from the vote of the Central Legislature. Our action was in no sense intended as a discourtesy to yourself, with whom our relations have always been cordial, or to this Honourable Council.<sup>1</sup>"

As early as 1923, the Council of State had rejected the Official resolution which sought to reduce the Travelling and daily allowances of its members, so as to bring them on a par with those admissible to the members of the Legislative Assembly on the ground of the dignified position the Council occupied in the constitution.<sup>2</sup> In 1925, Mr. K.C.Roy opposed a resolution regarding the appointment of a Committee to investigate the grievances of Post Masters saying that a body like, the C.S., the senatorial chamber of the Indian Empire was not a fit and proper place for ventilating the grievances of subordinates of the Post Office "When I say this, I feel, I am backed by the practice of the Senatorial Houses of Europe."<sup>3</sup> The members gave their hearty cooperation to the President in maintaining the decorum of the House which was confessed by the latter in the following words: Whatever success I may have attained as your President is all due to you and not to me...I may honestly confess that at times in the beginning I felt very nervous but it was your cooperation, your willing help and assistance, your obedience to the rulings of the Chair and your generous regard for me that helped me in

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1. C.S.Debates, Official Report, 22nd March, 1938, p 497.

2. C.S.Debates, Official Report, 7th July, 1923, pp 1543-60.

3. C.S.Debates, Official Report, 1st. September, 1923, p 134.



discharging my duty.<sup>1</sup>

As guardian of the privileges of the House, the first President Sir. A. P. Muddimen had gone even so far as to rebuke the Government members who came unprepared for the discussion of a resolution, notice of which had been given at the required moment. Similarly on a memorable occasion, as was pointed out by Sir David Devdas, Sir Maneckji Dadabhoy, the first and the last Indian President of the Council of State protected the rights of the Chamber of the Council of State against encroachment by the Executive, when after spending weeks in the Legislative Assembly it came to the Council of State and wanted a Bill to be passed in a few hours.<sup>2</sup> The efficiency and devotion with which the President discharged his duties were also remarkable. It was difficult for many members to stay in their seats for long hours without a smoke or a chat, but the President remained in his seat for long hours listening the members on dry subjects of Khewra Mines, animal nutrition or the knotty conundrums relating to Finance.<sup>3</sup>

The Council, in the main developed important traditions with the help of the Chair. The first was the admission by the President of even such amendments to the resolutions which happened to change the subject matter of the original Motion. The Second was the latitude in matter of time which the President allowed to the movers of resolutions or Bills and to important members representing different shades of opinion.

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1. C. S. Debates, Official Report, 17th October, 1936, p 542.

2. Ibid, p 536.

3. Ibid, p 536.

At the close of this Chapter, it is worth while to quote the President of the Council again: " It would be ingratitude on my part if I did not express my opinion as regards the work this Council has performed I say without hesitation and without fear that the level of speeches in this Council has always been very high as compared with many Indian Legislatures. The tone and manner and the courtesy with which the members have throughout acted is an example to other Councils."<sup>1</sup>

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1. C.S. Debates, Official Report, 17th October, 1936, p 542.



CHAPTER IV

THE COUNCIL OF STATE IN THE PROPOSED FEDERATION

Bicameralism    0  
and                0  
Federation       0  

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Federalism provides an additional argu-  
ment for bicameralism. In the process  
of development of unitary states into

federation, there are always two distinct sentiments at work in two divergent directions demanding dual loyalties from the citizens. Therefore, the special representation of federating states in the organs of Central government is usually considered to be a necessary feature of constitutions of the Federal Unions and it is one of their distinguishing marks.<sup>1</sup> The sentiments of local loyalty must find a definite place in any scheme of federation. The problem of every constitutionalist is to provide for the representation of the units without prejudice to national interest. This requires that a separate House of Legislature should be formed to give adequate representation to local interests as opposed to the national one which is represented in the Lower House.<sup>2</sup> The special functions of a federal upper chamber beside revision of Legislative measures, should be to devote itself to the study of measures and their effects with special reference to the peculiar conditions of individual states. This process assists the central authority in the evolution of equitable legislative solutions and

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1,2. Henry Sidgwick: Elements of Politics, pp 534-35.

in the maintenance of a durable balance between local and national interests.

Secondly there is always a desire on the part of units to preserve and develop their separate culture, and even to impress it on every sphere of national life. In the popular chambers, according to the accepted democratic principles, the representation to the units is made on the strict basis of their population. The units comprising a federation neither necessarily have the homogeneity of culture nor they are equally populated. These factors are apt to result in a wide disparity in their respective strength in the House and is the real cause of danger to the smaller units which may be swamped by a combination of larger states in a House where every thing is decided by majority vote. The creation of a second chamber, representing equally all the units is the only solution which guarantees against the tyranny of a possible combination of major against the minor units. It may be argued that 'all pervasive influence of party organisation without which no democracy can work leads to the disappearance of any real distinction between one chamber and the other.'<sup>1</sup> The answer is that party organisation beside giving adequate consideration to local sentiments, is compelled to give more and equitable representation on its organs to those units simply because it wants to capture as many seats in the Upper Chamber as in the Lower.

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1. M. Venkatarangaiya: Federalism in Government, p 38.  
See also B. M. Sharma: Indian Federation, pp 101-103.



It is said that in almost every Federation powers <sup>and</sup> functions of federal and local governments are so clearly divided that there should actually be no fear of encroachment by one on the rights and privileges of the other. In the presence of a written constitution and a clear division of functions, the Upper Chamber being the guardian of states rights loses its significance when an independent judiciary is entrusted with the task of not only interpreting the constitution but also with that of guarding against the federal inroads in the provincial sphere. It can declare such measures on reference as null and void. But even this argument falls to the ground when we find that no constitution provides for the compulsory reference of every piece of legislation to the judiciary. It can, on the other hand, give its verdict on a law only if it is submitted to it for judgement by a voter or the State government itself. In such a case there is always a possibility of an interval occurring between the passage of a disputed law by the federal legislature and its actual submission to the court. The harm that the law is supposed to cause, may display itself during that interval. But the trouble does not end here. Suppose the judicial authority decides the case in favour of the complainant, even then the latter will take time to recover from the evil effects of the legislation. (2) Some laws enacted by the Central legislature may be within its competence and constitutionally quite correct. But in the actual working of the Government, it is not the constitution alone which is binding. Political and economic considerations of a particular locality sometimes outweigh the constitutional powers of the government. A legislation may be consti-

tutionally correct, but from the point of view of the political and economic conditions prevailing in any one or in some of the units of a federation, its application may be completely unwarranted. The law courts can not declare that a particular measure is invalid because it can not be applied due to these particular circumstances. Such warnings may be given and measures resisted successfully only by members of the second chambers who are presumed to represent those particular units as units. While if there is only one House, it may be easily subdued by a combination of the representatives of a few big states.

Thus when the framers of the American constitution decided upon to have a second chamber they found in the principle of representation of units a convenient basis for determining its composition. It also enabled them to effect a compromise on the question of equality of representation claimed by the smaller states and opposed by bigger ones, the senate being based on equality and the House on the population of different states. 'Bicameralism in a federal legislature is thus taken as the inevitable result of the compromise between national and local forces which are accomodated in the constitution.'

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1. N.C. Roy: The Constitutional System of India, p 165.

See also Gangollee, pp



Federation - a new  
force in India

Origin: The Government of India

Act, 1919, did not create a

federal polity, though it gave to India the outward semblance of a federation. The idea of hammering out a constitutional framework for India first occurred to John Bright when the Bill for transferring the sovereignty of India from company to the Crown was pending in parliament.<sup>1</sup> Later in the early 20th century, Sir Henry Cotton, president of the India National Congress set forth the ideal of all United States of India each with its own local autonomy cemented together under the <sup>2</sup> egles of Great Britain.<sup>2</sup> The joint Report observed, "looking ahead to the future we can picture India to ourselves only as presenting the external semblance of some form of federation. The provinces will ultimately become self governing units, held together by the central Government, which will deal solely with matters of common concern to all of them. But the matters common to the British provinces are also to a great extent those in which the native states are interested - defence, tariffs, exchange, opium, salt, Railways and posts and Telegraphs. The gradual concentration of the Government of India upon such matters will therefore make it easier for the states, while retaining the autonomy which they cherish in internal matters, to enter into

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1. N. Gangolee: The Making of Federal India, pp 217-218.

2. Ibid, pp 218-219.

closer association with the central government, if they wish to do so. But though, we have no hesitation in forecasting such a development as possible, the last thing that we desire is to attempt to force the pace. Influences are at work which need no artificial stimulation. All that we need or can do is to open the door to the natural developments of the future.<sup>1</sup> Accordingly they suggested to form a chamber of princes to deliberate on matters of common concern to states and the British India.

The problem of  
Indian States

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The forces to which the Report  
referred were working in the direction

of Federalism since 1857. But this development was not taken into account by John Bright. The relations between the Indian States and the British Government were subject to the rule that unequal alliances tend towards the major partner swallowing up by slow degrees the minor allies; deciding all doubtful points in its own favour and putting its own interpretation on the rights and obligations of the states. The British Government slowly but intentionally extended its authority far beyond the range of matters covered by treaties. As a result of those extensions the autonomy of the states was circumscribed. Their original status as equal allies was transformed into that of several integral parts of one Imperial Polity.

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1. Joint Report, p 192.



In case of extra territorial jurisdiction, except in the case of certain states, coinage, currency, opium policy, limitations of armaments, railways and Telegraphs - the conditions of mutual relationship changed enormously as it was through the control of these affairs that the Central Governments encroachment policy advanced. But all these steps were in the interest of India as a whole.

Moreover, the Central Legislature, after 1920, having a majority of elected members, was entrusted with larger powers of influencing the general policy of the Government of India on matters of All India concern. There was no direct means of communication between the states and the legislature. When the policy of discriminatory protection was adopted by the Government on the advice of the legislature, the states were neither consulted nor benefitted by its adoption. Their people had to pay enhanced prices and other indirect taxes imposed by the British Indian legislatures. "So far as the states were concerned it was clearly a case of taxation without representation."<sup>1</sup>

It was the force of these economic and political realities which compelled the Maharajas of Bikaner and Baroda, to think as early as 1914 about the establishment of "an appropriate federal machinery to safeguard the interests of the states in consistence with those of British India."<sup>2</sup> In 1917 at a conference

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1. N. Gangullee: The Making of Federal India, pp 218-219.

2. M.K. Varadarjan: The Indian States and the Federation, p 10.

of princes and Ministers in the state of Bikaner and a scheme of federation was actually discussed. Later in 1922, on the occasion of His Excellency the Viceroy's visit to his state, the Maharaja of Alwar declared more precisely, 'My goal is the United States of India, where every province and every state, working out its own destiny in accordance with its own environment, its own tradition, history and religion will combine together for Imperial purposes, each subscribing its little quota of knowledge and experience in a labour of love, freely given for a higher and nobler cause.<sup>1</sup> In a speech at the East India Association, H.H. the Maharaja of Patiala confirmed what his colleague of Alwar had said a few years back.<sup>2</sup>

Thus by the time the Round Table Conference commenced, the idea of an all India Federation has gained ample recognition by all the 'would be' partners. What was required was the formal announcement by the princes in their Collective capacity. It was at the first session of the conference that H.H. the Maharaja of Bikaner again reiterated his desire for an Indian federation embracing the Indian states as well. And on the last day of the Conference, H.H. the Maharaja of Patiala was briefed in his capacity as chancellor of the chamber of princes to declare their readiness to join such a Federation if it comes into existence.

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1. N. Gangulsee: The Making of Federal India, pp 218-219.

2. Indian States Register and Directory, 1929. Pp 130-131.



The Maharaja's declaration in spite of clearing the misgivings about the intention of the princes, also brought complications with it. Indian Federation without states was deemed to be shorn of all its importance. The states themselves could not agree to any plan tending to establish either dyarchy or full responsible government at the centre without their participation in it, primarily because it was bound to affect their relationship with the crown as also their despotic rule. They showed therefore, a readiness to join the federation and expressed a desire to be represented in the Federal Legislature which was quite natural. This desire in turn created the new problem of deciding the proportional strength of British India and States representation in the Federal Legislature both of which had quite different forms of government. It was this factor which proved to be the most important in deciding the form of the Central Legislature, and necessitated the revision of structure and functions of the Upper Chamber also. Hitherto the India statesmen and the Government of India were to deal with a second Chamber in a Unitary State, but from now on they had to solve a much more complicated issue of a second Chamber in a peculiar type of federation, diversity of whose component parts had no parallel in any part of the globe except in the German Federation of the Nineteenth century.

The Constitutional  
Problems:

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It had been foolish enough for  
those interested in the solution

of the Indian problem to have closed their eyes and to have refused to be benefitted by the experience of the working of other federations and the lessons of history. Congress and the British Governments, despite their mutual suspicions, distrust and differences, were unanimous on the necessity of having a strong centre. In addition to the usual federal powers - defence, communication, external affairs, coinage and currency, there was also to be drawn up a long list of concurrent subjects over which the Central supremacy was to be stamped. There might have been every possibility for a unicameral legislature elected, as it was, on communal basis to be subject to momentary ebullition and gusts of violent passions, which might have been harmful for British Indian provinces so differently populated.

For the cautious use of such enormous legislative powers which were going to be entrusted to the federal legislature, a revisionary body, to examine the decisions arrived at in a popular legislature over loaded with passions of communal and antagonistic religious beliefs, was really needed. Nehru Committee which represented the largest possible political agreement of different political organisations in spite of condemning the existing council of state, in its Report,

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1. All Parties Conference Report, p 94.



recommended the establishment of a revisionary Chamber.<sup>1</sup> Nor did the Simon Commission receive a suggestion from any corner of the country 'to abolish a piece of Constitutional Machinery' which, in their opinion, had worked so well.<sup>2</sup> It was irrational on the part of the Simon Commission to recommend its abolition simply on theoritical grounds.<sup>3</sup>

The Council of State as it then existed provided a body of men whose greater experience, longer term of membership and comparative independence from popular election, had certainly made itself an element of stability in legislation. A branch of legislature which had played such an outstanding revisionary role could not be abolished by any Government by a simple stroke of pen.

There was not a single constitutional precedence before the framers of the Government of India Act where unicameral legislature had been established in a Federal Polity. Pakistan's example is very recent, where both wings of the State had been given equal representation in the National Assembly. On the other hand it was the Bryce Report and Federal experience, which held ground and none<sup>of</sup> these sought to abolish the Upper Chamber. The Labour Party's demand in England for abolishing the Second Chamber there, proved to be a mere election stunt which was

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1. All Parties Conference Report, p 94.

2,3. Indian Statutory Commission Report, Vol. II, p 125.

<sup>1</sup>  
never fulfilled. Mr. Atlee's draft in the Joint Parliamentary Committee proposing a Unicameral Federal Legislatures was rejected mainly because it carried no weight of authority and precedence with it.  
<sup>2</sup>

Beside all these facts and arguments, the problem of accession of the Indian States with the proposed Federation required a solution. There were some 562 States big and small which fell into three categories. (i) States the rulers of which were member of the Chamber of Princes in their own right; (ii) States the rulers of which were represented in the Chamber of Princes by twelve members of their order; (iii) Estates, Jagirs and other. The first category included 109, the Second 126 and the third 327 States.  
<sup>3</sup> The rulers of those States could only join the Federation if they had been accorded adequate representation Collectively against the British Indian Provinces and individually against one another. In the latter case besides their relative population, area and revenue, the personal honours of their rulers e.g. the number of the salutes accorded to each of them was the matter of great concern for deciding the basis of their respective representation. A unicameral legislature could not offer without becoming unwieldy, such a large number of seats to those hundreds of States with due considerations to their rank and title. Only creation of a Second Chamber could

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1. The British Constitution by Sir Ivor Jennings, p 102.
  2. Joint Select Committee Report, Vol. I, part I, Proceedings. See also Joint Select Committee Report, Vol. I, part I, pp 227-78 and p 114.
  3. The Indian States and the Federation by Varadarajan, p 3. The figures quoted from the Butcher Committee Report, 1929, by the Indian Statutory Commission Report, Vol. I, p 83, 108, 127



save the Central Legislature from becoming too large and could also to a greater extent fulfill the demands of individual rulers for representation than a single Chamber.<sup>\*</sup>

British India 0  
favoured 0  
Bicameralism 0

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Apart from a small section of Political theorists wedded to the ideal of

unicameralism, every recognised Political organisation in the country put forth schemes for a double Chambered Indian Legislature. The dispute was not on the existence of a Revisionary body as such, as on the extra revisionary functions and powers that were entrusted to a Council composed of vested interests and conservative elements of Society. The development of Indian Provinces and States towards a federal polity had further strengthened the case for the continuation of bicameralism. What was required, therefore, was the revision of the Constitution and constitutional powers of the then existing Council of State and not its abolition.

Even at the Round Table Conference (2nd Session) where every shade of political opinion was represented, no other delegate except Mr. V.V.Giri, exhibited any hostility to the establishment of a bicameral legislature for Federal India.<sup>1</sup> Even Mr. Gandhi himself being confessedly a unicameralist had to bow down before bicameralism because the actual conditions of the Indian

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1. R.T.C.Proceedings (Second Session), p'60

\* Joint Select Committee Report, Vol. I, part I, p 114.

problem so earnestly required not merely its continuity but also moderation in the process of transformation of India from a unitary to a real Federal State.\*

The years between 1919 and 1935 saw various proposals for the modification of the powers and structure of the Council of State, as well as those for its status quo. In this latter category come the resolutions passed by the Indian European Association<sup>1</sup> and the specific shape was given to them by a liberal statesman Sir P.C.Sivaswamy Aiyer.<sup>2</sup> But these proposals being either advocated by the foreigners or the Indian liberals could not gather wide support inside the country.

Proposals requiring modification were of two types - one inclined to the American Senatorial model while others were influenced by the position the French Senate occupied in the third Republic. One of the advocates of the former said: " If we are to have a Second Chamber we must see that it is built somewhat on the model of the American Senate, whose great influence and power are known throughout the world. On the other hand...if our Second Chamber of the future is to degenerate to the level occupied by the French Senate, it is extremely doubtful whether the time and energy that will be spent in keeping

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1. Memorandum on Indian Constitutional Reforms, submitted by the Council of European Association (Calcutta).
  2. The Indian Constitutional Problem, Chapter VIII, See also in this connection Reforms Inquiry Committee Report (1924), and the Indian Central Committee Report, (1929), p 66.
- \* R.T.C. 2nd Session Proceedings of the Federal Structure and Minorities Sub-committee, Vol. III, p 1347.



up this Second Chamber will be worth the trouble involved."

...<sup>1</sup> in which case I would not hesitate to propose its discontinuance."

Mr. Phiroze C. Sethna observed: "We are considered fit to control the raising of money; we are not considered fit to control the expenditure thereof. This is an item which would be taken up in hand by the Committee. The members of this Council, constituted as it is, represent a body of voters who pay the largest amount of revenue to Government, either by way of land tax or income tax; and yet they have no right to tell the Government how the revenue ought to be spent. I therefore, drop a suggestion which may well receive consideration, Why should the Budget not be voted on in a Joint Sitting of the Legislative Assembly and the Council of States."<sup>2</sup> On the other hand there was certainly a more influential section of the Indian opinion which regarded the Council as 'an absolutely reactionary body which is ready to set aside the decisions of the other House, where the popular representatives have got a narrow majority, but really people think and they are right in thinking, that there is no effective majority at all to represent popular views.'<sup>3</sup> The Leader of the Congress (Swarajist) party in the House said: "There is not one man who has got the progress of the country at heart

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1. Hon'ble Saiyed Raza Ali: Council of State Debates Official Report, Vol. III, 1923, p 1220.

2. Hon'ble Sir P.C. Sethna: Council of State Debates, Vol. III, 1927, p 1073 and 1076.

3. Hon'ble P.C. Desika Chari: Ibid p 1079.

that, would vote for a Second Chamber of the Character of the Council of State, as it is at present.<sup>1</sup> It is evident that what was really in dispute was the character and composition of the Council of State and not its existence. Modifications in structure were demanded but the abolition of the institution was not the aim of any criticism.

Proposals:

The Nehru Report was the Second greatest effort on the part of Indian Political leaders to offer a concrete scheme of constitutional reform for the country. The Report while criticising the existing Second Chamber 'consisting of obscurentists and peoples belonging to special classes whose Chief aim' in their opinion was 'to protect their own interests and obstruct all liberal measures,'<sup>2</sup> favoured the establishment of a Second Chamber based on a different franchise.<sup>3</sup> The only justification for it 'the Committee wrote' is that it ensures the reconsideration of all measures emanating from the Lower House in a somewhat calmer atmosphere and more dispassionately than is likely to be the case in the Lower House when controversial matters are discussed.<sup>3</sup> They however, recognised that it was specially necessary in India owing to the existence of Communal feelings.<sup>4</sup>

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1. V. Ramadas Pantulu: C.S. Debates Official Report, 7th Sept. 1927, p 1082.
  2. All Parties Conference Report, p 94.
  3. Ibid, p 94.
  4. Ibid.

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The Committee recommended a senate consisting of 200 members to be elected by the Provincial Councils, a specific number of seats being allotted to each Province. The population test, according to this Report was not to be adhered to in its entirety, so that the smaller provinces could also have adequate representation. The elections to the Chamber were to be held, they suggested, according to the Principle of proportional representation with the single transferable vote. In their view, the electorate, consisting of the members of the Provincial Councils, could claim to possess the quality of a fairly high degree of intelligence who could return right kind of men to the Council. Deserving candidates being incapable to face the 'shouting and tub-thumping of democratic elections' could be safely elected by those bodies. The membership of the Council could thus truly reflect the tone and temper of the mass electorate. Another advantage of the proposed method, they observed, was, that Provinces as units of the Indian Federation could be represented and Provincial view points on different issues might be presented and thereby the desirable Co-ordination between the Central and local bodies could be brought about.<sup>1</sup>

On a close examination of the Report and particularly its proposals for the Senatorial Chamber, we find that in spite of being a most united effort on the part of Patriotic

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1. See All Parties Conference (1928) Report, pp 94-95, and p 104.

minds of India, it suffered from numerous defects. The foremost of all was that being premature, its scope of operation was narrowly limited. It was premature in the sense that at the time it was published, neither, the Indian States had officially indicated their desire to join the Federation, nor the British Indian Political parties were sure and certain of their (State's) Colloboration. It was mainly due to this reason that no provision was made for the representation of the Indian States in either Chamber of the Federal Legislature by the said Report. The natural corollary was that the scope of its operation was limited to the British Indian Provinces only. It excluded from its orbit some 600 units of the would be Federation. Indeed it was a document hastily drawn up by the Indian political Parties in response to the challenge thrown to them by the then Prime Minister of Great Britain.

Specifically speaking, their plea for the recognition of the Principle of representation of Units as units was only half hearted. On the one hand while accepting this principle they recommended indirect elections, but on the other, they departed from the generally obtaining practice in federations of giving equal representation to all provinces - big and small alike - in the Federal Upper Chamber.

Further there was no complete unanimity among the participant groups on the question of franchise. A majority of the first All Parties Committee recommended a restricted franchise



on the lines of that which existed for the then existing Council of State while a minority had insisted on having indirect elections. In the Second All Parties Committee, the cards were turned and the latter proposal was accepted. Even this principle of indirect election had its own defects. Its application was bound to broaden the basis of the Upper Chamber and thereby had made its authority more effective and real, tending to give it more weight than was its due as a revising body. The Report was, therefore, not a perfect guide for finding the solution of the problems of a Federal Upper Chamber in India.

Simon Commission proposals (2)

The statutory Commission did not suggest any specific alterations,

in the structure of the Council of State for federal purpose; except that in order to give express recognition to the Federal Principle of equality of representation, it recommended that all Governor's Provinces should send three members each to the Federal Council instead of returning the present unequal number on the basis of their respective wealth and population. (The Lower Chamber or the Federal Assembly had to represent the population and the Upper Chamber was to be the representative of units as such. Smaller units like North West Frontier Province and Delhi had to send one representative each; and the Chief Commissioner's

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1. All Parties Conference, 1928, Report of the Committee appointed by the Conference to determine the principles of the constitution for India, p 94.
  2. Simon Report, Vol. II, pp 125-126.

Provinces of Ajmer Merwara, British Baluchistan and Coorg were to be alternatively represented by one member. In view of the increase in Federal authority, the commission recommended special representation of Commercial interests. One representative of British or European and one of the Indian Community from each of the three business centres of Bombay, Madras and Calcutta were to be chosen by the Chambers of Indian and British Commerce separately.

Members from Governor's Provinces, according to their scheme, were to be indirectly elected by the Legislative Councils of the Provinces, or by the local Assemblies where the former did not exist. The Commission left undefined the mode of election of members from Chief Commissioner's Provinces. The qualifications suggested for membership were to be as high as those existed for the old Council of State. The Pernicious System of Communal electorate was recommended by the Commission to be abandoned for the Federal elections in favour of proportional representation.<sup>1</sup>

The Commission recommended for the retention of the existing proportion between elected and nominated elements in the Council.<sup>2</sup> Instead of putting a maximum limit over the number of nominated members they wanted that a minimum of 20 officials

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1. Simon Report, Vol. II, p 126.

2. Ibid, p 125.



should be fixed by Statute.<sup>1</sup> They particularly emphasised the representation of labour through nomination because labour was a Federal subject.<sup>2</sup> Sex disqualifications were suggested to be abolished, members of the Governor General's Executive Council were to have the right of participating in debates in either Chamber.<sup>3</sup>

The Council had hitherto a life of five years as compared with three years of the Legislative Assembly. Now, as they proposed to fix the life of the Federal Assembly to five years, they thought it desirable that each Council should have a life of seven years.<sup>4</sup> Nehru Committee had proposed the same span of life for the Federal Senate.<sup>5</sup>

So far as the Herculean Task of the relations between the Union and Indian States was concerned the Commission made three concrete proposals. The first of these was to draw up a list of matters of Common Concern in consultation and by agreement with the ruling chiefs.<sup>6</sup> The Second was to record in the preamble of the Constitution a desire for closer cooperation between the Indian India and the British India.<sup>7</sup> Finally

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1. Simon Report, Vol. II, p 125.

2. Ibid, p 127.

3. Ibid, pp 126-127.

4. Ibid, p 127.

5. All Parties Conference Report, p 95.

6. Simon Commission Report, Vol. II, p.203.

7. Ibid, p.203.

they recommended creation of a standing Consultative Body of 30 members of whom 10 were to be representatives of the States. The majority of the States representatives would be nominated by the Chamber of Princes; the Viceroy might complete the list by invitation, so as to provide for the representation of those Indian States which did not form part of the Chamber.<sup>1</sup> From the British Indian side a portion was to be elected by the Indian Federal Legislature and the remaining were to be nominated by the Governor General. The role of the Committee, they recommended was to be purely advisory. Its opinion on matters of Common concern was to be recorded and put before the Legislature for deliberation. It is significant to note that the proposed Committee was not to be a part and parcel of the Legislature, nor its considered opinions was to have any binding force on the Government of India. The final power of enactment and decision<sup>2</sup> was left to the Indian Legislature and the Governor General.

The proposals of the Statutory Commission suffered from the same serious defects as the Mehru Report. Both left the States practically and constitutionally outside the orbit of the proposed federation. The Council of State proposed to be representative of Units was deemed completely unfit for the representation of nearly 600 states. The Commission, by proposing

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1. Simon Commission Report, Vol. II, p 203-204.

2. Ibid, p.204.



indirect elections for both Chambers of the Federal Legislature committed the serious breach of the principle of representation of peoples in the Lower Chambers as against that of units in the Upper House. Both Chambers had to represent the centrifugal tendencies while no representation was suggested for the national sentiment. The extents of criticism further increases when we see that the Commission recommended for the retention of the existing proportions between nominated and the elected elements and the retention of the existing powers of the Council of State.

The Simon Commission being conscious of the short comings of their proposals and of the magnitude of the problem of future relations of Indian States with the proposed Federation requested the Prime Minister to convene as early as possible a conference of representatives of both Indias. They confessed that their proposals regarding the Council for Greater India were tentative in Character, and those concerning the Federal Legislature were subject to modification in the light of criticism of those representatives to be ascertained in that conference.<sup>1</sup>

The Round  
Table  
Conference

Accordingly a Round Table Conference  
was convened in London by the Prime

Minister in which 16 delegates represented the Indian States, 57 went from British India and 16 members of the Parliament

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1. Simon Report, Vol. II, p. 13.

were drawn from various parties,<sup>1</sup> In the very first session H.H. the Maharaja of Bikaner proposed a Federation for India, and on the last day of the first conference the Maharaja of Patiala confirmed the decision on behalf of the Chamber of Princes. Now this being their attitude, it was obvious that what these states wanted before acceding to the Federal Plan, was a n actual share in the Legislative and executive authorities of the Federation. They were not prepared to accept the position of powerless advisors to the Federal Legislature as was proposed by the Indian Statutory Commission. Hitherto the main problem had been only to distribute the seats of the Central Legislature between the various Communities but now events added one more burden of adjusting the claims of States for their representation in the Federal Legislature.

These States covered an area of 598,138 square miles<sup>2</sup> with a total population of 68,652,974 inhabitants. They were not located in a compact territory but were unevenly scattered all over India. Most of them were surrounded by the British Indian territory. Approximately all of them together formed  $\frac{2}{5}$ th of the territory of the entire sub-continent.<sup>3</sup> On the strict basis of their population they were not entitled to get more than 20 per cent of seats in each House of the Federal Legislature. But like the old Muslim demand for weightage in representation, they made a demand for a reservation of fifty percent

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1. N. Sengolee: The Making of Federal India, p 107.
  2. Report of Indian States Committee, p 10.
  3. Ibid.



seats in the Upper House. "The claim that we put forward for a fifty fifty representation in the Upper House, I wish to make it clear, was conceived in no bargaining spirit, it rested upon a solid question of principle. The principle was that the federating parts of India should be equally represented in that Chamber, which voiced the views of the various federating governments as a whole.<sup>1</sup> Rai Bahadur S.M. Bapna, another State delegate made it clear at the very outset that 'if it were decided to have a bicameral legislature, the representatives of States in both Chambers should be selected, elected or nominated, as the case may be, according to the forms of Government prevailing in the respective States.'<sup>2</sup>

The next question that came up before the conference was regarding the principle upon which seats were to be apportioned to individual states in the Council of State. It was suggested that the constitution of the Chamber of Princes affords a safe and convenient basis for the solution of the problem between the State 'interse'.<sup>3</sup> But this was more disadvantageous to the smaller States as compared with the position that was likely to be occupied by the bigger ones. The classification of States into first, second and third classes, the permanent membership of the Chamber of Princes being confined to bigger ones and the complete exclusion from the Chamber of third class states was likely to result in the complete exclusion of the latter from the membership of the Council of State.

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1. Round Table Conference Second Session Proceedings, p 125,  
See also p 112.

2. Ibid, p 73.

3. Round Table Conference (Second Session) Proceedings, p 126.

Indian opinion was opposed both to the principles of weightage and nomination. Dr. Shafaat Ahmad Khan voiced the British Indian view in the conference saying... "We cannot give to the princes any weightage in either House of the Legislature. They can only claim representation in the Lower House as in the Upper House by population."<sup>1</sup> K.B. Halidayat Hussain demanded them "before they come into create an electorate for representation in the Lower House just in the same way as in British India, and for the Upper House a system of nomination on the advice of an advisory body composed of such elements as form the electorate for the Upper House in British India today."<sup>2</sup>

Their claim for a fifty fifty representation was also unfounded. Indian States and British India were not the two units of a federation like the East and West Pakistan. Both were subdivided into still smaller units. The principle of equal representation demanded that every province and every part of the Federation should be equally represented in the Council and not as envisaged by some State delegates that 50 percent seats be allotted to the States and the remaining 50 percent to the British Indian" Provinces. The solution might have been that States could be formed into Unions, approximately equal in size and population to those of the British Indian Provinces, and each Union thus formed could have been given representation equal to

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1. Round Table Conference Proceedings (Second Session), p 193.

2. Ibid, p 64.



to each British Indian Province. Their representatives could be nominated by their rulers in consultation with each other and on the advice of the Prominent Political groups inside their respective States.

The Conference, however, failed to arrive at any definite conclusions.

The Government  
of India Act  
1935.

The Government of India Act 1935

was a compromise between the claims

of Indian States and those of British India on one hand and among the different Communities and classes of British India on the other. Like all compromises it was unacceptable to every party and satisfactory to none. Neither the Indian States as a whole nor the individual states approved it. (The Joint Parliamentary Committee recognising the States' claim for weightage in each Chamber of the Central Legislature recommended the adoption of the White Paper proposals, which had the approval of the Government of India. The latter document had proposed for the Upper Chamber a total strength of 250 members, of whom 100 were to represent the States and this suggestion was embodied in the Act. Certain larger States had expressed a preference for a substantially smaller Upper Chamber which would have

certainly proved inadequate for larger body of smaller States.<sup>1</sup> However, the State were entitled to 60 seats in the Council and 90 seats in the Assembly.<sup>2</sup> It was on the recommendation of the Federal Structure Committee which said ' that the allotment of seats to the States should be in the strict proportion of 40 per cent in the Upper Chamber and 33 per cent in the Lower,<sup>2</sup> that such a high weightage was given to them. In the Upper Chamber alone they secured 44 seats over and above their due share.

The question of the distribution of seats among states bristled with difficulties mainly arising from the desire of smaller states for individual representation. In view of the limited number of seats allotted to the states, it was impossible to avoid some form of grouping at least of the smaller ones. At first the representatives of the Chamber of Princes were of the opinion that the distribution of seats to the states 'inter se' should be left to the Chamber. Grave doubts were expressed by other members of the Committee as to the possibility of the Princes ever coming to an understanding on such a question. The Federal Structure Committee recorded both the views and expressed an opinion that in case no agreement was reached by the Princes till March, 1933, an impartial tribunal was to be set up to advise the Government on the matter.<sup>4</sup> The Chamber,

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1,2. Varadarajan, The Indian States and the Federa<sup>tion</sup>/ p. 68

3. Third Report of the Federal Structure Committee, para 14.

4. Ibid, para 26.



as was foreseen, found itself unable to arrive at an amicable settlement and invited the viceroy to decide the issue. The detailed allocation of seats as given in the table appended to para II of the First Schedule to the Act, embodied the decision<sup>1</sup> given by the Viceroy in response to that invitation. According to the Table, twelve States had to return in all 31 members to the Council and six States were to have 2 seats each. The remaining states were to be clubbed together in groups of two, three and four states. Each group thus formed had to return one member to each Chamber with the exception of the residuary group which was to send two members to the Council and five to the Assembly.

This distribution of seats was not to the complete satisfaction of any single State. The bigger one were deprived of their share of weightage seats in the Council because the allocation was based on the rank of the State as indicated by the dynastic salute of its ruler. "It had been admitted by high authority that such salutes afford no guide to representation. When the constitution of the Chamber of Princes was under discussion, Lord Chelmsford as Viceroy, in his speech at Princes' conference 1919, said that he and Mr. Montague, were of the opinion that the whole question of salutes needed more careful investigation in view of the anomalies which appeared

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to exist, and that they held, therefore, that it should be unwise to base upon the Salute list, as it stood, any fundamental distinctions between the more important states and remainder.<sup>1</sup> In the Joint Select Committee Mr. Atlee realising the difficulty of allocation of Seats to the States remarked, " The proposal submitted is to allocate seats to both Houses, and seems to combine the criteria of Status and population. We consider that the introduction of Status unnecessarily complicates the question and we would desire to see laid down a definite population basis for representation, though we recognise that it may be difficult to obtain consent to this simplification."<sup>2</sup>

" How hard these states are hit by such distribution may be judged from the fact that the representation of the State of Hyderabad is reduced by more than a half. On the basis of its population it is entitled to 11 seats, but it gets only 5. The State of Mysore, the population of which is twice that of Kashmir and two and a half times that of Baroda, is to rest content with three seats for no other reason than that of its ruler having the same number of salutes as the rulers of these States. Travancore gets representation on a par with the State of Kalat, the population of which hardly approximates to one fifth of that of Travancore."<sup>3</sup>

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1. Varadarajan: The Indian States and the Federation, pp 70-71.
  2. Joint Select Committee, 1933-34, Vol. I, Part II, Proceedings, para 56.
  3. Varadarajan: The Indian States and the Federation, p 71.



The details of representation of States in the Upper House as originally proposed and secretly transmitted to the Secretary of State for India were as follows:-

Hyderabad	7
All 21 Gun Salute and Travancore State	3 each
All other 19 Gun Salute States	2 each
First 17 Gun States in importance	2 each
All other 17 Gun States, all 15 Gun States, with the exception of Dewas (Senior Branch) Dewas (Junior Branch) Banswara, Dungarpur, Pratapgarh and 13 Gun States of Bhawanagar, Navanagar, Junagadh and Benaras.	1 each
All 13 Gun and 15 Gun States accepted above	1/2 ,,
All 11 Gun State with the exception of Manipur and Puddakkoti	1/3 each
All gun States except Banganapalle	1/4 each
Some of the more important non-Salute States in Bihar and Orisa and the Central Province.	1/4 each
The rest of the more important non-salute States in Bihar and Orisa, the Central Provinces and the Deccan States Agency.	1/5 each
Group representation for all the smaller states not included above and the Madras States of Puddakkotai and Bangana Palle and Sandur.	1 each

No seat had been allotted to the 11 Gun State of Manipur in the original proposal and it was difficult to combine it with any other state and on the plan adopted it was only entitled to 1/3 of a seat. Moreover, the Secretary of State<sup>1</sup> had expressed the view that it was very difficult to justify individual representation in the Upper House of any State having a Salute of one gun. It was however proposed to give Manipur a seat in the Lower House. This plan with a few modification

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1. Varadarejan Express letter to His Majesty's Secretary of State for India dated Simla June 2, 1933 (Secret) Private, Vide Reform Office File 99/33, p 4.

2. Ibid.

was adopted and became a part of the Government of India Act of 1935.

The representation of the major States was further reduced to what was allocated to the British Indian Provinces of corresponding size and population. Mysore and Hyderabad were comparable in point of population to Orissa and Central Province respectively, but no logic and reason were employed in the allocation of seats to the two types of units. While Orissa was given five seats Mysore got 3; and as against the 8 seats allotted to the Central Province, Hyderabad got 5. Sir Akbar Hydari in his Memorandum (November 1933) on the size and composition of the Federal Legislature warned the Viceroy on this score, saying, " The demand of the larger States is not that each should get a large number, absolutely speaking, but that each of them should not get a disproportionate number of seats; disproportionate when their quota is compared to what is given to British Indian units of corresponding size, population and resources and much more disproportionate when they are compared<sup>1</sup> in respect of these factors with the medium and smaller States." There was also a desire on the part of the Government of India to meet as far as possible the claims of Indian States for individual representation.<sup>2</sup> It was primarily this consideration that the quota of seats of bigger states was so substantially cut down. The demand of smaller states was so strong at one time that they even decided to sacrifice even bi-cameralism

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1. Vide Reforms Office File No. 192/33, p 27.

2. Ibid.



provided each of them could have secured separate representation .<sup>1</sup>

Another serious defect in the allocation of seats as made by the Act was that petty States with a population hardly equal to one - twentieth of a constituency in British India were given separate representation in the Council simply because at some period in the History of their relationship with the crown, a gun salute was conferred on their rulers. Such concession not only gave over representation to petty States at the expense of bigger States with more solid and substantial interests but it also condemned the latter to perpetual under representation. In the words of Mr. Varadarajan, ' Such representation would perhaps be quite unobjectionable if the Federal Legislature was an ornamental body like the Chamber of Princes, discussing questions of precedence among rulers, Mizaspursi, Ceremonials to be observed at Viceregal visits, how many steps away from the Carpet a ruler should received the Viceroy and the like. The decisions of such a Chamber are of no consequence, but the laws made by the Central Legislature do not operate on the puffs of smoke emitted by the Salute guns but bind millions of men living in the States. In a legislature of this kind where decisions are reached by the counting of votes, the distribution of seats on any basis other than that of population can not be justified by any principle of political ethics.'<sup>2</sup>

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1. Memoranda, O.P.Cited.

2. Varadarajan: The Indian States and the Federation, p 72.

For the representation of States which were grouped together, two alternative methods were prescribed by the Act. Government of India in their letter to the Secretary of State had written: "Nomination by individual States in rotation is unlikely to be practical or satisfactory even in case where the group consists of only two or three rulers. Election in some form is therefore inevitable, even though electoral Colleges might consist of only of the Rulers concerned. This system has worked reasonably well for purposes of representation, in the Chamber of Princes. But little real interest has been taken in these elections or in the proceedings of persons elected. Much more vital importance will be attached to elections for the Federal Legislature and it would be galling for many rulers to see their States represented by persons elected on a majority vote, but who so far from enjoying their confidence, may be definitely obnoxious to them. The only methods of mitigating this objection seem to be:

- (a) to make the electoral Colleges of Rulers very large (e.g. all states of Rajputana and Western India which do not enjoy direct representation) and to assign several representatives to each group. The result should be fairly acceptable to all State in the group.
- (b) to broaden the electoral basis in small group for the election of only one member - e.g. by using local councils as electoral Colleges for electing a panel of Candidates or, in more advanced areas, by some more liberal and popular process -



so that at any rate some body of the opinion in every State might be represented by the person ultimately elected even if he were abnoxious to the Ruler.<sup>1</sup>"

The Government of India Act provided the ruler of a group of States each to appoint a representative in rotation to fill the seat allotted to the group, and the person so appointed was to remain a member of the Council for one year.<sup>2</sup> Take for example a group of three States which were collectively given one seat in the Council. Each of them could fill one seat in rotation for one year. If groups of such States had acceded to the federation, it would mean that in actual practice two of the three States in the group had to remain completely unrepresented for two years. The method embodied in the Act was, therefore, unacceptable to the smaller States which were grouped into Unions for such purposes.

The other method prescribed by the Act was that of election by the rulers of a group, who were empowered by agreement and with the approval of the Governor General in his discretion to jointly appoint a person to fill the seat.<sup>3</sup> Each ruler had one vote and in case of a tie, the matter was to be determined by lot or in such other manner as might be prescribed.<sup>4</sup> It was the same scheme which is referred to in the preceeding page. The

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1. Reform File No. 195/31, Note on proposed representation of Indian States in the Upper and Lower Chamber of the Federal Legislature (Unprinted), pp 11,12.
  2. Government of India Act, First Schedule, Part II, Rule 6.
  3. Government of India Act, First Schedule, Part II, Rule 6.

Joint Select Committee which approved the Governor General's scheme, wrote in their Report " We have been given to understand that while susceptible of minor adjustment, in a few particulars the scheme has met with a large measure <sup>of</sup> ~~and~~ support among the States." Personal jealousies of rulers, their long standing <sup>1</sup> ~~feuds~~ and their undemocratic nature could not allow them to adopt the method. How far the scheme was really supported by the Princes and how the Committee was brought to understand it, is rather curious. The only norm which can be applied in judging its acceptability to the princes, was their attitude towards the federation which they never joined. The Committee saw in it <sup>2</sup> " a form of representation more suited to the Common interests <sup>3</sup> which could contribute to the selection of better qualified representatives in the Federal Legislature," <sup>4</sup> but the princes could not think on the same lines. Being born and bred in aristocratic traditions the idea of election was against their nature.

## Representation of Indian Provinces

Of the 156 Seats assigned to British India, six were reserved for Governor

General's nominees. Thus only 150 seats were left to be filled

1. Joint Select Committee Report, Vol. I, part I, para 208.
2. Sir Shafaat Ahmad Khan: The Indian Federation, p 63.
3. Joint Select Committee Report, Vol. I, part I, para 208.
4. Government of India Act Schedule Part I, section 3.



in by elections. " There is no part of the subject of our enquiry which has seemed to us to present greater difficulties than the question of the method of election to a Central Legislature.<sup>1</sup> " Indeed the problem was so intricate and its solutions so varied that it was almost impossible to recommend any of them without the risk of inviting controversies. The Nehru Report having based its scheme of a Federal Upper Chamber on the principle of representation of Units as units, recommended indirect election.<sup>2</sup> The Indian Statutory Commission had practically endorsed the suggestion. " Sir Siwaswani Ayer advocated the maintenance of 'status quo', The White Paper provided indirect election to the Upper Chamber. But the Joint Parliamentary Committee in order to help in maintaining closer control with<sup>3</sup> electors provided for indirect elections to both the Chambers instead of the Council of State only. Thus the units were given double representation and the Committee abrogated the complementary principle of peoples representation in the Lower House. But when the Government of India Bill having these provisions was submitted to Lords for their approval by Lord Zetland, the latter accepted an amendment for direct election to the Council by same electorate as that for the then existing

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1. Joint Select Committee Report, Vol. I, Part I, para 193.

2. Nehru Committee Report, Para 8.

3. Joint Select Committee Report, Part I, Vol. I, para 193.

Council of State. The amendment was later agreed to by the Commons.<sup>1</sup> This amendment actually put the Federal Council in a funny position. Being elected by highly qualified voters it could claim itself to be a more representative body than the Assembly. The Federal Council being representative of the higher class of Society, while the Federal Assembly was to represent the Units, with the result that people in general could not come into the picture. The Council of State might be so constituted as to become in reality 'Phillip the sober to whom appeal might be made from 'Phillip the drunk'. But ~~at~~ here in India, the latter Phillip being given no chance of entering the Hall of Legislators, both Houses were to be occupied by the sobers. The insistence on high property and other qualifications combined with higher age for candidates was 'unlikely to return persons of a volatile character to the Council, and the Federal Assembly being indirectly chosen was not likely to be open to sudden gusts of passions.'<sup>2</sup>

There was another consequent flaw created by the composition of the Upper Chamber. The Act had nowhere mentioned as to which House the ministers were to be responsible. What can be inferred from the silence of the Statute on the point is, that the minister should have been responsible to the more popular and more powerful Chamber. But as regards the comparative popularity and influence it was rather difficult to say as to which Chamber these qualities could be more conveniently attributed.

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1. N.C.Roy: The Constitutional System of India, p 173.

2. Ibid, p 187.



The widely accepted principle of equal representation of Units was disregarded by the framers of the Act. Federation is a manifestation of intermingled emotions of Unity and diversity, both of which <sup>could</sup> shared exist side by side. Preferential treatment of any one unit of a Federation is bound to be naturally resented by others. It is for these reasons that in U.S.A., South African Union, Switzerland and Australia equal representation is conceded to all units in the Federal Senates, without any regard to their unequal size and population. It is however, necessary to apply a principle for its own sake, we should not forget the peculiarity of the Indian Problem. Apart from the Provinces, there were other types of Units which were invited to join the Federation ~~which~~ were more than 500 in number. If the Principle of equal representation had been accepted in its entirety, it was difficult to withhold the same right from those 563 states and this would have created an impossible situation. The Government of India taking note of the seriousness involved in the problem of allocation of seats to the British Indian units brought it to the notice of the Franchise Committee that "for the Upper Chamber which will represent in the main the units as such, the guiding principle should be reasonable approximation to equality of representation for each unit." They made it plain<sup>1</sup> that absolute equality in this respect would be inequitable.

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1. Reforms Office File No. 183/11/31 proposed terms of Reference to the Franchise Committee, p 2.

They referred to the suggestion made that Provinces exceeding 20 millions in population should be assigned an equal number of seats, for each say 17; to Central Provinces 7, to Assam 5; to North Western Frontier Province 2; to Delhi, Ajmer, Koorgh and British Baluchistan one seat each. The Joint Parliamentary Committee accepted<sup>1</sup> the suggestion and the Government of India Act<sup>2</sup> followed their advice.

The seats were again divided among Communities and the principle of separate electorate was further extended to the scheduled castes. At the Second Round Table Conference, Gandhiji made an effort to solve the problem mutually with the communities concerned without any external interference, but he had to confess his failure and put the blame on the Communal Composition<sup>3</sup> of delegations attending the Conference. In the Congress scheme circulated at the request of Mr. Gandhi, it was clearly stated that "Joint Electorate shall form the basis of representation in the future constitution of India."<sup>4</sup> Dr. B.S. Moonje in his Memorandum put forth Hindu Mahasabhas' stand for Joint Electorate.<sup>5</sup> Except these two, every other party and delegation put forth their claims for separate and adequate Communal Representation. The Joint Memorandum demanded that all communities

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1. Joint Select Committee Report, Vol. I, Part I, P 113.
  2. Government of India Act, Part I, Schedule I Appendix.
  3. Report of the Federal Structure and Minorities Sub-Committee p 1346.
  4. Federal Structure and Minorities sub-committee Report, Appendix I, p 1391.
  5. Ibid, Appendix VI, p 1401.



at present enjoying representation in any legislature through nomination or election shall have representation in all legislatures through separate electorates...but no majority shall be reduced to minority or even equality...Similarly after a lapse of ten years it will be open to any minority in the Central Legislature to accept Joint electorate with or without reservation of seats with the consent of the Community concerned. The Sikh Leader demanded the reservation of 5 percent seats for his community in both Chambers of the Federal Legislature. Thus the conditions at the Round Table Conference encouraged the extension of Communal and separate electorate, while the advocates of Joint electorate, were only a microscopic minority.

Indirect elections were provided for the European, Anglo-Indian, Depressed class and women representatives. Thus all the various principles of direct election, indirect representation, and nomination were combined in the Constitution of the Federal Council of State. Members of Provincial Legislative bodies belonging to those Communities had to form the electoral colleges for that purposes. General and Muslim representatives were to be directly elected by Voters of their respective Communities possessing almost as high qualifications as were required for the electors and members of the then existing Council of State.

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1. Ibid Appendix III, p 1395 Provision for the Settlement of Communal Problems put forward jointly by Muslims, Depressed Classes, Indian Christians, Anglo-Indian and Europeans.
  2. Report of the Federal Structure and Minorities Sub-committee Memoranda by Sardar Ujjal Singh Appendix IV, p 1399.
  3. See the Delimitation Committee Report, Para 701-717.

By a close examination of the Indian Delimitation Committee Report, it may be asserted that combination of the population and voting strength in different regions of the Provinces was the basis of carving out the territorial constituencies for the Federal Council. Efforts were made to narrow down the difference of population, area and voting strength of the then existing Council of State. But the disparities could not be totally eliminated. In the Puzabad Mohammadan rural constituency there were only 293 voters for one member, and in the same constituency the Number of Hindu voters for a seat was 874.<sup>1</sup>

Property qualifications for the Muslim voters (as was the case with the then existing voters of the Council of State) were comparatively lower than that for the General Voters. Even between the Hindu constituencies themselves, the same wide differences in their electoral strength persisted. In the Lucknow constituency for example there were 307 general voters as against 1085 in Gorakhpur for one seat.<sup>2</sup>

A new provision requiring the minimum age of 30 for members of the Council was added to the Act. But the provision was superfluous as the persons responsible for electing the members to the Council were required to have such financial stake in the Government that it was highly improbable for them to return non-serious and extremists to the Council.

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1. Delimitation Committee Report, pp 110-111.

2. Government of India Act, Part I. *ibid*



As regards the nominated members, the Indian Statutory Commission recommended for their retention in the same proportion as it was in the Council of State. The Government of India supported the suggestion on two grounds. They wrote in their despatch on proposals 'First, we hesitate to rely altogether on the qualifications, which will be prescribed for the Candidates, to secure an element which <sup>has</sup> ~~was~~ proved valuable in the <sup>s</sup>part and is indispensable in a Senatorial body. Second, we consider it desirable that for sometime longer the Central Government should be able to count on support from the Upper Chamber. For that reason they deemed it essential that the Council of State should remain a body of Conservative disposition.<sup>1</sup>' But as the object in view could be secured through the inclusion of State representatives who were expected to be conservatives - and further by the inclusion of Europeans - who could be safely expected to be always loyal to Government as their previous record showed - the number of nominated seats was to be reduced. The White Paper<sup>2</sup> accordingly proposed for ten nominative seats, but, the Government of India Act, 1935, further reduced it to six. The justification for nominations from the Official point of view was that persons not being elected to the Legislature but inevitable for appointment to Ministerial Offices, could be nominated to the Upper Chamber. The Act did not provide any specifications for these Members.

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1,2. Government of India's Despatch on Proposals for Constitutional Reform, para 146.

Powers

The Council of State of the proposed Federation had no exclusive powers of impeachment like the British House of Lords, nor had it the power of confirming the public appointments made by the head of the State like those of American Senate. Nor like our present Council of States it enjoyed any exclusive power of recommending the president to include in the Federal list any of the Powers given to the Provinces by the Constitution. It was merely a part of the purely legislative Machinery. Being a part of the Federal Legislature, it possessed almost the same power of Legislation as the Federal Assembly. An exclusive enumeration of its powers is therefore impossible. It was in financial matters only that its powers were more enhanced than those of the Council of State of 1919.

The White Paper proposals, suggested that the appropriation of revenues, other than proposals relating to the Heads of Expenditure charged on the Revenues of India, should be submitted to the Assembly for approval. These demands were then to be laid before the Council and the Council could require that any demand rejected or altered by the Assembly should be brought to a Joint Session. But motion for this purpose could be moved only by the Government.<sup>1</sup> But the Government of India in their secret telegram to the Secretary of State objected to the proposed enhancement of its authority in financial sphere. They

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1. Proposals for Indian Constitutional Reform, paras 47-48.



wrote, "In paragraph 27 of our Reforms Telegram of 22nd July, No. 1627, we expressed preference that while powers of both Houses should be equal in all other respects (except that) voting of supply should be a matter solely for Lower House. We adhere to that view. Suggestion that Upper House should select at will heads of estimates voted upon by Lower Chamber to be voted on by itself will be most strongly resisted by every section of the British Indian opinion, which will not be reconciled by the provision that disagreements would be resolved in Joint Session.<sup>1</sup> But the Joint Select Committee endorsed the former view<sup>2</sup> and the Government of India Act provided for completely equal powers to both the Chambers.<sup>3</sup> This was really a novel provision which broke the long established tradition of bi-cameralism, that the revisionary Chamber should neither have nor exercise equal authority and absolute veto over financial Legislation, but it should be content with an inferior role in that field - inferior to that of the Popular branch of the Legislature. At the Round Table Conference, it was again Mr. V.V.Giri who voiced the Indian Point of view saying, "There would be less objection to the establishment of an Upper Chamber having only a suspensory veto upon the Legislative proposals of the Lower Chamber. But as the Report of the Federal Structure Committee now stands, we cannot accept the proposal for a bi-cameral Legislature, with the two Houses having practically

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1. Telegram to the Secretary of State dated 22nd Feb., 1933, Vide Reforms File No. 37/33 views of the Government of India on the Draft White Paper, p 2.
  2. Joint Committee Report, Part I, para 215.
  3. Government of India Act Section 30-37.

equal powers.<sup>1</sup> Such a House to him was to be a 'needless impediment to progress.'<sup>2</sup> Indeed, it was the insistence of the States

to give equal authority to a House in which they were sure to get forty per cent of the total seats and hence to occupy there a more influential position than in the Lower House where they could secure no more than 30 per cent representation. The

Secretary of State supported their claim as is obvious from his comments secretly transmitted to the Government of India in which he said: " There is much to be said for your views that Powers in relation to supply should be confined to Lower House.

States have always attached importance to Council of State having co-equal powers in this matter with Lower House....I am reluctant not to meet than to some extent and the limited power given to the Upper House in the final version of the proposals seem to me a not satisfactory solution."<sup>3</sup> Even Mr. Spence in

the Secretaries Conference told that provision for equal powers would tend to 'enormously increase the difficulties of getting the Budget through and it seemed to him that the present procedure of passing the budget before the end of the financial

year would be not longer possible.<sup>4</sup> His view was communicated to the Secretary of State but the Joint Select Committee did not give an ear to the protest made by the Government of India and their secretaries.

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1,2. Round Table Conference, 2nd Session Proceedings, p 60.

3. Telegraphic Comments of the Secretary of State on Government of India Despatch on Proposals - vide Reforms File No. 37/33, p 12.

4. Proceedings of the Secretaries Conference, 6th December, 1934. Confidential File No. 115/34 Reforms, K.W.



In case of disagreement the device of Joint Sittings to solve the difference was provided by the Act. Such Joint Sittings could also be convened for censuring the ministry in which case as confessed by the Government of India, the Indian States would form one-third of the total membership of both Houses and could thus enable to sustain the ministry in Office in face of unanimous censure by the representatives of British India.<sup>1</sup> Thus the problem created by entrusting equal authority to both the Chambers could not overcome the difficulty by adopting the device of Joint Session. Federations with bicameral legislatures have nowhere generally shown so much favour to the Upper Chambers. The difference in the competence of the Federal Legislature regarding the two class of units was bound to give rise to suspicions on both sides. The Federal Legislature was empowered to frame laws for Provinces on all matters enumerated in the Federal list, while its power of Legislation with regard to Federated States was to be confined only to the first 47 items of the Federal list which they were required to agree to before entering the Federation through the instrument of Accession.<sup>2</sup> This distinction incapacitated the British Indian representatives from initiating the discussion and legislation concerning the affairs of a state excluded from the Federal Competence through those Instruments of

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1. Note on proposed representation of Indian States in the Upper and Lower Chamber of the Federal Legislature vide Reform File No. 195/31, p 4.

2. Government of India Act IV, Schedule Form 3.

Accession. But on the other hand the State representative had not only the right to participate in such debates but to have a share in deciding the fate of every measure affecting British India. In the words of Sir Winston Churchill, " The princes who are to come in with every kind of reservation for themselves may sprawl broadly over the entire politics of British India."<sup>1</sup> On the other hand the States were also apprehensive of the fact that in spite of a clear prohibition to discuss internal affairs of a State, the Federal Legislature could indirectly discuss those matters and particularly with the Governor General's Power of suspending the rule if in his opinion a particular matter<sup>2</sup> involved the federal interests or federal subjects.

The dyarchy condemned in the Provinces was to be established in the Centre and for this purpose the Governor General was to have a Council of Ministers not exceeding ten in number.<sup>3</sup> It was not mentioned as to how many of these ministers <sup>were</sup> have to belong to each Chamber, nor did it provide for any specific number apportioned to State delegations in each House. Under the conditions provided in the Instrument of Instructions, the Governor General was required to appoint them in consultation with a person who was able to command the confidence of the<sup>4</sup> Legislature... Here again it was not clear as to which of the

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1. House of Commons Debates, 13th March, 1935, p 356.

2. Government of India Act, Section 38.

3. Ibid, Section 9(1).

4. Draft Instrument of Accession Clause VIII.



two Houses the said person should belong to and in which of these he should be able to command a majority.

Term of British  
India representatives 0  
0  
0

The Indian Statutory Commission recommended that the

life of every Federal Assembly should be five years and that of the Council of State should be 7 years. <sup>1</sup> The Government of India in their telegram to the Secretary of State proposing the partial renewal of the Council of State at intervals, wrote: 'In place of your proposal we prefer suggestion in paragraph 13 of our Reforms Telegram of 22nd July, No. 1627, that the Upper Chamber should not be liable to dissolution, and that on each general election in provinces the...duty... should be election of Provincial representatives to take place in Federal Upper House of Representatives elected by previous provincial councils. Unless this procedure be followed for British Indian seats Provincial representatives in the Federal Upper House may frequently and for long periods be unrepresentative of the current opinion in Provincial <sup>2</sup> Councils.' Thus the Government of India wanted complete renewal of British Indian representative in their Council every seven years, while State representatives were not to necessarily vacate their seats at the same time. But the Government of India Act which embodied the suggestions of the Joint Parliamentary Committee aimed at making the Council a permanent body with as many as one third

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1. Simon Report, Vol. II, Para 152, p 127.

2. Reforms Office File No. 37/33 (Secret).

of its British Indian members retiring every third year in accordance with the provisions of the First Schedule to the Act.

State Represen- 0  
tatives' term. 0  
                   0

The period for which a member appointed by a state entitled to separate representation was to be nine years, while that for the groups of States which were to appoint jointly it was to be 3 years, and by States appointing in rotation, only one year. The States were apprehensive that once nominated for a fixed term their representative might become independent of the ruler, and thus in spite of forfeiting their confidence, he might continue in an office which he really owed to the pleasure of the ruler. They demanded that provision be made in the statute enabling the ruler to recall his representative even earlier by giving him notice in writing to that effect. But the demand was turned down by the Joint Select Committee who held that a State representative was to hold his seat on precisely the same terms as elected member from British India and no distinction could be made between the two.<sup>1</sup> The States remained naturally dissatisfied with this decision.

Certain minor improvements were made by the Act of 1935, in the Constitution of the Council of State. Unlike its predecessor, it was empowered to make rules regulating its own

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1. Joint Select Committee Report, para 210.



procedure, subject to the Rules made by the Governor General for the conduct of business concerning the due discharge of his special responsibilities.<sup>1</sup> The President and Vice-President<sup>2</sup> were to be elected by the Council itself. The quorum was fixed<sup>3</sup> at one sixth of the total strength of the Council. Members were also to be paid salaries and allowances, the amount of which was to be determined by the Federal Legislature. These few provisions were real improvements upon the existing system, but these were all, however, improvements of minor importance.

A Second Chamber was required not to exercise coordinate authority with the popular Chamber and thereby thwarting the nation's will, but to play its due Secondary role in the Federal arrangements. What Mr. Churchill said of the whole scheme applied equally to the constitution of the Federal Council of State. He described it : " as a gigantic quilt of jumbled crochet work. There is no theme, there is no pattern, there is no agreement; there is no conviction, there is no simplicity, there is no courage. It is a monstrous monument<sup>4</sup> of shame built by the pigmies."

By its composition, method of election, representation of States through nomination, restoration of Communal disharmony through continued Communal electorate, the proposed

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1. Government of India Act, Section 28.

2. Ibid, Section 22.

3. Ibid, Section 23.

4. Quoted by N. Gangoole: The Making of Federal India, footnote, p 207.

Council was certainly to become an Ulster of Imperialism. The seeds of its own ruin and even those of the whole scheme of Federation were sown into the Constitution of the Council itself. The condition precedent to the establishment of the Federation was that States entitled to chose at least 52 members of the Council and comprising one half of the total population of States, should <sup>SIGN</sup> first the Instrument of Accession. The condition having never been fulfilled, the constitution did not come into operation till 1950. With the Federal plan of 1935, the Council expired before its inception unheard, unsung and unwept."

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CHAPTER V

C O N C L U S I O N

" Of all questions relating to the theory of representative governments, none has been the subject of mere discussion, specially on the continent, than what is known as the question of two Chambers.<sup>1</sup>" The real problem before the constitutionalists of all time has been the composition of the Upper Chamber. If the two houses have similar composition, both will be subject to the same influence and the decisions of a majority in one House. But if they are composed of dis-similar elements, the danger of obstruction in the matter of legislation becomes more probable and the chances of delay are increased. But " the inconvenience of delay, and the advantage of the appeal to the nation, might<sup>2</sup> be regarded in this case as about equally balanced." According to John Stuart Mill, both the Houses need not be of the same composition, because they are intended as a check on one another. " One being supposed democratic and the other will naturally be constituted with a view to its being some restraint upon the democracy. But its efficiency in this respect wholly depends on the Social support which it commands outside the House."<sup>3</sup>

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1. J. S. Mill: Considerations on representative Government, p 239.
  2. Ibid, p 240.
  3. Ibid, p 241.

John Stuart Mill regarded it as a fundamental maxim, that in a democratic constitution, there should be a nucleus of resistance to democracy. If the people are willing to tolerate, such a centre of resistance can best be provided by the establishment of a Second Chamber.

But "of all principles on which, a wisely conservative body, destined to moderate and regulate democratic ascendancy be constructed, the best seems to be that exemplified in the Roman Senate, itself the most consistently prudent and sagacious body. The deficiencies of a democratic Assembly, which represents the general public, are the deficiencies of the public itself-want of special training and knowledge. The appropriate corrective is to associate with it a body of which special training and knowledge should be the characteristics. If one House represents popular feelings, the other should represent personal merit, tested and guaranteed by actual public service and fortified by practical experience." If one is the people's chamber the other should be the Chamber of statesmen; a council composed of all living public men who have passed through important political offices or employments. Such a Chamber would be filled for much more than to a merely moderating body.<sup>1</sup> Thus "the Council to whom the task would be entrusted of rectifying

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1. J.S. Mill:



the peoples mistakes, would not represent a class believed to be opposed to their interest, but would consist of their own natural leaders in the path of progress." Since this work of J.S. Mill was published, there have been hundreds of attempts made by political theorists and constitutional experts to devise means through which a second chamber may be established in a satisfactory manner. But the one notable feature of all these schemes has been their strict adherence to the principles enunciated by J.S. Mill. Bagehot, Henry Sidgwick, Lecky, Lord Acton, Marriot and Viscount Bryce, vitally as they differed in their general political outlook, all of them unanimously accepted these principles laid down for the constitution of a second Chamber. The latest and the most competent effort in this direction was made by the Bryce Conference. The principles which it accepted for the consideration of the problem, is really a page torn from the 'considerations' of Mill on Representative Government.' Transmitting to the prime Minister the majority's view of the Conference Viscount Bryce in paragraph 61 of his letter wrote: "We had to reconcile the sentiment of attachment to a institution with the new social conditions and the demands of new phases of thought...There were two principles on which a second Chamber might be constructed. One was that of filling a House with the largest available number of capable and experienced men whose presence would win

for it that kind of authority which comes from personal eminence. The other principle was that of creating a Chamber which should be more quickly responsive and most fully responsible to public opinion, drawing its strength from the fact that it had been popularly elected. It was impossible to give full scope to either of these principles and to secure in ample measure the benefit of either source of strength without losing some of the merits to be expected from the other. We had, therefore, to find means whereby to combine as many as possible of the advantages with as few as possible of the defects of either course, and we had to remember that either plan which philosophers might approve would not necessarily find like favour with the bodies by whose will, it would have to pass into law. So, too, when the powers of the Second Chambers had to be defined, similar perplexities arose. It was generally agreed that a second chamber would be of little use unless it were strong enough to differ from the House of Commons when a proper occasion arose...But it was also agreed that a second chamber ought not to be so strongly entrenched as to dispose it to engage in frequent contests with the House of Commons, so as to embarrass the executive and clog the wheels of legislation. It thus became necessary to steer a middle course between these two extremes.<sup>1</sup> The

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1. G.H.L. LeMay: British Government Select Documents, pp 154-155.



conclusion of the whole discussion may be summed up as follows: (1) There ought to be a second chamber to rectify the mistakes of the popular House. (2) It should be composed of elements different from those which compose the popular chamber (3) These elements should not be taken from a class which is antagonistic to interests of the people generally, but from a class which has played the role of natural leader in the path of progress. (4) In order to give weight to its authority the principle of election should be so combined with the requisition of personal eminence, experience and knowledge that it should be strong enough to differ from the Lower Chamber, but not disposed to engage itself in frequent contests with the latter.

It is on the basis of these principles that the constitution of the Council of State in India should be judged. The Electoral rules of the Council were so framed as to yield an overwhelming representation to the landholders and Commercial interests. The most numerous class of members belonged to the former category. They occupied as much as half the elected seats of the House. This class was described by the authors of the Joint Report (one of whom had later to shoulder the responsibility of framing the electoral rules) as "The natural and acknowledged leaders in country-areas are the landed aristocracy...By position, influence and education they

are fitted to take a leading part in public affairs," and of the smaller gentry they wrote: "They are less influential but often not less educated than their former overlords, and being unheaped by the traditions of nobility, they will be less averse to playing their part in public affairs. Indeed they figure already upon local and district boards; and there is hope that they will furnish a useful and independent contingent to the legislative bodies of the future. No men are better qualified to advise with understanding and great natural shrewdness on the great mass of rural questions...!"

For the representation of knowledge and experience the electoral rules of the Council of State provided franchise to the persons of eminence in the field of learning, like the members of a University Senate, and holders of the high title of *shamsul-ulana* or *Mahanahopadhiya*. Similarly in order to give representation to those experienced in the legislative business, all the persons who had been at one time or other, members of either the local or the Central Legislature, established prior to 1919, were given the right to vote and be elected to the Council.

The extreme conservatism of landed aristocrats and their influence on the proceedings of the Council were modified by the presence of the progressive commercial and industrial magnates who, by their very natural position were leaders of industrial revolution that was



dawning over India.

The only alternative to this method might have been the election by the Provincial Legislatures from among their own numbers or from outside. But because the electorate of the Provincial Legislatures was substantially the same as that of the Lower Chamber, there was little possibility of finding a revising Chamber with a different composition elected on a broader basis.

It was the result of the adoption of these arrangements that the Council of State represented the statesmen of high eminence like Sir Dinshaw Waoha, Sir Maneckji Dadabhoy, Sir Umar Hayat Khan, Rt. Hon'ble Srinivas Sastri, T. Rangachariar, Sir Sankara<sup>n</sup> Nair, Rai Bahadur Lala Ram Saran das and Sir Phiroz Sethna, who beside, being experts in various fields of social and economic life, had previous experience of sitting in the late Imperial Legislative Council which was presided over by the Viceroy. It was because of the influence of these personalities that the Council of state developed the traditions of a 'House of Elders', whose opposition to official measures, in spite of the fact that it was based on substantial grounds of reasoning and facts, was courteous and parliamentary in language. Nobody can doubt the patriotism and the liberalism of those gentlemen who through their learned and profound speeches contributed a good deal not only to the dignity of the Council, but also to the nation,

particularly in the economic and social phases of its development. It is true that the outlook of the two Houses on various problems differed, but it is also true that the Council of State avoided extremism on both sides. By its working it neither proved itself a citidal of re-action, nor extremely progressive. It believed with Sir Dinshaw Wacha that, " a nation cannot be built in that way. Everything must take time. We must go forward step by step. You can not jump up to the top of a hill all at once. You can only climb up step by step. Therefore we must proceed slowly, gradually and cautiously. This is the proper way to reset the scale of nations."

It is not contented that the Council of state was a perfect blessing. Like other human institutions, it suffered from certain drawbacks. The substantial representation which the Government secured in the House, through the process of nomination hindered the Council in the discharge of its duty to some extent. It prejudicially affected the independent action of the Council in favour of or against the Government by the enbloc support of the official measures by the nominated contingent. The Council being a body of Elder Statesmen, could perhaps help on every occasions the Government in coming to terms with the Lower House, had there been no solid official block inside the

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1. C.S. Debates Official Report, 18th Feb., 1926. pp. 208-209.



House, and no power of certification vested in the Governor General.

The power of nominating non-officials vested in the Governor General, was exercised primarily with a view to balance the representation of minorities and interests who were not well represented otherwise. The power was used liberally by the Executive. Men of proved ability like Sir A.P. Patro, G.A. Natesa and Sir Syed Raza Ali were nominated to the House, who instead of being mere pawns in the hands of a Government to whom they owed their memberships, often voted and spoke against the Government when occasions arose. But generally speaking the attitude of nominated members was favourable to the official benches. The Simon Commission recorded in their report that if a nominated member opposed Government in season and out of season, there was a possibility of his being passed over at the next occasion when the House was to be renewed.

One great change that the Government of India Act, 1919, brought about in the Indian constitution was that it virtually changed the bureaucracy into a government party at least in the Legislature. And as the party was not sure of its majority in the Council of State, its grip over the nominated non-officials naturally tightened. Before 1909 when all the members of the Legislative Council were nominated by the Governor General, they could fearlessly express themselves and vote against the Government,

but since the elected element made its appearance, not only the official members were deprived of their freedom of conscience, but the nominated non-officials also followed suit.<sup>1</sup> The fear of being<sup>ly-</sup> passed in the next Council worked as a strong brake on their unhindered action. The fact that the Government proposals were rejected on fourteen occasions<sup>2</sup> in a period of 24 years in the Lower Chamber was due the smaller number of nominated members there. Similar results might have been achieved in the Council of State had these not been a consolidated official block. For the conflicts between the two Houses, the nominated bloc was as much responsible as the irresponsible character of the Executive.

It was not, however, property and wealth only which got representation in the Council of State. On the other hand like the Belgian system of electorate for the Upper Chamber, it included men of eminence in every walk of life - political, economic, social, literary and technical. Although so far as the proportion of nomination and elected members was concerned, the Council of State bear no comparison with any second chamber of the democratic world. But so far as the questions of offering the Council the benefits of expert advice or to represent interests otherwise not represented, were concerned, the nominations were indispensable. In this connection we may take the example of South African

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1. N.C.Roy: The Constitutional System of India, p 189.

2. R.Compland: Indian Politics, 1936-42, p 10.



Legislative Council where nomination is provided for persons having high legal and academic qualifications and the knowledge of native problems. For this purpose in a House of 40 members, eight seats are reserved. But in British India in a House of 60 although as many as 25 were nominated, but only 5 to 6 were non-officials and even among the elected contingent direct representation was given to British Commercial interests. Thus the actual strength of the official bloc was brought to 27. As has been already remarked in the previous chapter, the absentees<sup>e</sup> were most numerous among the elected members. Thus it was the Government which ruled the House. Indeed, this was the most obnoxious feature of the constitution of the Council of State which frequently attracted the attention of its critics and members of the Council of State itself. No impartial observer can deny it. But, the real question which has to be considered is the manner in which the Council of State, composed of whatever elements it was, exercised the powers entrusted to its charge, and this brings us to the discussion of powers which an Upper Chamber should possess and their justification.

The Joint Select Committee of parliament wanted to see the Council of States as a true Second Chamber from the very commencement.' As to the functions appropriate to a Second Chamber one will have to revert again to the

Bryce Conference. The Conference was unanimous that Bills of a purely financial character were the exclusive rights of the commons and that the Lords or any Second Chamber cannot claim to reject or even to amend these Bills. With regard to non-financial matters the conference was again unanimous that a Second Chamber should discharge the following functions:

- (1) " The examination and revision of Bills brought from the House of Commons, a function which has become more essential, since, on many occasions, during the last thirty years, the House of Commons has been obliged to act under special rules limiting debate. "
- (2) " The initiation of Bill dealing with subjects of a comparatively non-controversial character which may have an easier passage through the House of Commons if they have been fully discussed and put into a well considered shape before being submitted to it. "
- (3) " The interposition of so much delay (and no more) in the passing of a Bill into law as may be needed to enable the opinion of the nation to be adequately expressed upon it. This would be specially needed as regards Bills which affect the fundamentals of the constitution or introduce new principles of legislation, or which raise issues where the opinion of the country may appear to be equally divided. "



(4) " Full and free discussion of large and important questions, such as those of foreign policy, at moments when the House of Commons may happen to be so much occupied that it cannot find sufficient time for them.<sup>1</sup>"

It must be pointed out at the outset that the strict adherence to the principles outlined by the Bryce Conference has not been achieved by any Second Chamber. These are still ideals for even those countries where bi-cameralism has taken deep roots. Therefore the application of the norm set forth by the Bryce Conference can not be absolute. While drawing conclusions on the basis of Bryce Report, we will have to take into consideration the historical and political conditions and the constitutional provisions which have influenced the working of these bodies and their relations with the Lower Chambers. The conclusions drawn will be only partly true.

The violent conflicts of authority that took place between the two chambers of the Indian Legislature were the direct result of their equal powers. But the British Indian Legislature could not avoid this natural outcome of the arrangements made. The 14 occasions on which the C.S. came into conflict with the Legislative Assembly

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1. British Government Select Documents, L.H.L. LeMay. pp 150-155.

can not be exclusively ascribed to the composition of the two chambers. The constitutional provisions of co-ordinate authority were as much responsible for their occurrence as they were in the Dominions and England. Thus before forming a judgement on the working of the Council of State, it is desirable to survey in brief the working of the Second Chambers in those places.

It was due to the exceptional and fortunate accidents that prior to 1832 there existed no fundamental difference between the social status of the commons and Lords which contributed in so linking up the interests of the two Houses as to form a common front against the crown for maintaining the supremacy of the parliament as a whole.<sup>1</sup> The authority of the two Houses also remained undefined and the presumption of co-ordinate powers on the part of each, led to sudden violent conflicts, the last of which resulted in the passage of the parliament Act in 1911, when the doubtful position was clearly defined for the first time and the principle of supremacy of commons was established. But even before the passage of the said Act, the House of Lords was fast receding into the background. Most of the historians of the British constitution agree with Mr. Sidney Low that for two centuries the strength of

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1. Marriot Op.cited , pp 133-135.



the House of Lords lay in its weakness.<sup>1</sup> "It would have been perfectly intolerable if it was as powerful in reality as it is in appearance."<sup>2</sup> But no one can deny that even an apparently powerful House cannot be tolerated when it determines to be as powerful in reality as it did in 1911. Before 1911, the House of Lords either rejected all reform measures or thrust upon the commons a compromise, or yielded to the personal persuasions of the Kings and their threats to create more peers to swamp the opposition. The latter course was followed in 1833. When 16 new peers were created to assist the progress of the Bill, it was only then that the continued opposition of Lords was overcome.<sup>3</sup> In 1869, Mr. Gladstone obtained from the Queen the permission to create 12 liberal peers to effectively present his Irish Church Disestablishment Bill before the Lords.<sup>4</sup> In 1884, they were asked to pass another Reform Bill and the collision between them and the Commons was narrowly avoided. They displayed their powers more effectively on Parish Councils Bill on which a compromise was at last reached.<sup>5</sup> Employers

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1,2. Sidney Low: The Governence of England, p 218.

3. Quoted by May: Constitutional Hist. p 312.

4. Morley: Life of Gladston, p 130.

5. The Constitution of England from Queen Victoria to George VI, pp 391-392.

liability Bill was abandoned by Mr. Gladstone due to their<sup>1</sup> effective opposition and finally came the deadlock on financial Bill in 1909. There was only one more case in the field of Financial legislation which is reported by the historians. It occurred in 1671, when the Lords successfully disputed the right of the Upper Chambers to reduce the amount of imposition. Thus since 1671 to 1911, the Lords came into conflict on 6 important occasions. It is enough to show that the co-ordinate authority lead to conflicts between the two chambers, untill one of the two Houses slowly recedes into the background.

The conflicts over money Bills and over social and political reforms have been a common feature of bi-cameral constitutions where second chambers have a composition different from the Lower Houses.

Broadly speaking the Upper Chambers in the dominions may be divided into two categories - (i) Elected and (ii) nominated. The former category includes those of Victoria, Tasmania, Western Australia, South Australia,<sup>2</sup> Cape of Good Hope and the Federal commonwealth of Australia. As the Indian Council of State had an elected majority, we shall therefore discuss the working of only those

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1. The Constitution of England from Queen Victoria to George VI, pp 39 & 392.

2. A.B. Keith: Responsible Government in the Dominions, p. 104.



chambers which come under this category. In the case of elective Upper Houses, with the exception of the Australian Senate, the general rule is that the Franchise for the Upper House is higher than that for the Lower Houses.<sup>1</sup> Further there is a property qualification for members of the Upper Chamber and in all these cases (except the Indian Council of State) members are required to be in a higher age group.

As the Legislative Councils of these dominions are elected, there is, therefore, obviously no reason to curtail their powers vis-a-vis those of the Lower Chamber. But the desire for adopting the practice of the Mother country on the part of the framers of these constitution was so strong that section 56 of the constitution of Victoria provides that Money Bills must be recommended by the Governor General to the Lower House and that taxation and appropriation Bills must originate in the Legislative Assembly. It was also provided that the Council can reject but cannot amend these Bills. This plan worked badly and a local Act of 1903 has empowered the Council to suggest amendments, though the alteration of nomenclature may be said to save the principle of

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1. A.B.Keith: Responsible Government in the Dominions, p. 104.

supremacy of the commons, however, meaningless such supremacy may be, when the two Houses have each a mandate, from the people.<sup>1</sup>"

In Western Australia, the constitution Act of 1890 only provided that the Governor's recommendation of Money Bills was essential and that Taxation and appropriation Bills must originate in the Legislative Assembly. By an amending Act of 1899, it is provided that the Council may freely return any Money Bill, sent up to it, requesting amendments but ' it has been ruled that the Council can not insist on a request rejected by the Lower House.<sup>2</sup>' The rule in Tasmania is the same as it originally was in Western Australia with the result that the Upper Chamber can by constitutional usage reject but not amend<sup>3</sup> a Money Bill.

In the Cape, the position is like that of Victoria Money Bills. It can be initiated in the Lower House<sup>4</sup> and the Council is freely permitted to amend them. Thus the position in the Cape and Victoria is more similar to British India (1921-45) than it is in Tasmania and Western Australia. The similar conditions are bound to

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1,2. A.B.Keith: Responsible Government in the Dominion, p 105.

3. Ibid, p 105.

4. Ibid, p 106.



yield similar results. "It is perhaps in Victoria," remarks Sir A.B.Keith<sup>1</sup> that the conflicts between the Council and the Assembly have been most prolonged and carried out." The first serious conflict arose during the Governorship of Sir Charles Darling on a new Customs Tariff Proposed which were tacked on by the Assembly to the Appropriation Act. The Bill was rejected by the Council but the Governor permitted the Government to raise money on the basis of a resolution of the Assembly and without any law. Thereupon the Governor was recalled on the charge of acting as a partisan of one chamber at the expense of the other.

The Second conflict arose next year, again on a Financial issue in which Sir Darling was again involved. The Assembly wanted to gratify Sir Charles who had incurred the loss of his position as Governor by providing him with some recompense and voted a sum of Rs. 20,000 as a gratuity to Lady Darling. The item was again tacked on to an appropriation Bill. The Council refused to concur in the decision of the Assembly.<sup>2</sup>

Another serious dispute was recorded in 1877 on the opposition of the Council to the principle of paying members and it refused to pass the Appropriation Bill.

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1. A.B.Keith: Responsible Government in the Dominions, p 106.

2. Ibid.

The Ministry successfully advised the Governor to issue orders for payment without the approval of the Legislature. The matter was referred to the Law Officers of the country and when their opinion was received, only then the Governor General issued the orders.

But the deadlock continued. The Government proposed that all Money Bills if not accepted by the Council within a month after their arrival there should be deemed to have passed and should be presented to the Governor for the Royal Assent; while all ordinary Bills, if passed at two consecutive sessions of the Assembly, should become law, unless at the request of the Council the Bill were referred to a plebiscite. But the Secretary of State refused to approve the proposal. He, however, suggested that both the House should follow the spirit of the English practice under which the Upper House cannot interfere in Financial matters and the commons refrain from talking. The suggestion was destined to assign a<sup>1</sup> inferior position to the Upper House. But the Governor (for subjecting the position of the Chamber in a definite constitutional manner) suggested that the Upper Chamber should be made nominee. The suggestion was turned down.

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1. A.B.Keith: Responsible Government in the Dominion, pp 106-107.



The case of South Australia bears evidence to the same effect. As early as 1864 the Council Complained of the attitude of the Assembly for ignoring the Council on Money matters. In 1877, in spite of the warning given 13 years earlier, the Assembly sanctioned the funds for the construction of new parliament buildings without the approval of the Council. The Council retaliated by declining the Minister-in-charge of Government business to proceed with his assigned task. It was only after the resignation of the Ministry, that the succeeding Government secured the passage of the measure for the necessary works and the crisis ended for the time being. The situation was far from satisfactory and in 1881 a measure<sup>1</sup> was found to solve the deadlock. But the device was again altered in 1901.

An effort was made in 1906 to change the conservative character of the Upper Chamber by broadening its Franchise. A bill was accordingly presented to the Council which was rejected by it. The Ministry therefore advised the Governor to order a penal dissolution of the council. The Governor refused at first, but having failed to form another ministry commanding the confidence of the Assembly, he was obliged to accept the advice. Luckily the result of the election was decided in favour of the Ministry. A compromise was reached in the end, which saved the Council from being elected on such a wide basis as was proposed by the Ministry.

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1. A.B.Keith: Responsible Government in the Dominion, pp 111-13.

In Western Australia the first Council was a nominated body. In 1894, it was changed into a elected chamber on a narrow franchise. Full powers of amendment in Money Bills in the form of requests were entrusted to it along with Co-ordinate authority in other fields. A violent dispute is reported to have occurred in 1907 on the question of imposing a land and income tax to which the Council refused to agree. The Governor had to prorogue the parliament. The Ministry had to make a compromise accepting the amendments of the Council and so the conflict was averted.<sup>1</sup>

The French Constitution of the third Republic had also provided a special method of election for the State. It provided ~~for~~ the electors to be forty years of age and they were to be chosen for a term of nine years. Thus it tried to preserve the historical continuity. The electorate was also limited. The local Councils practically constituted the College of electors. The elections were purely contested on purely party lines, with the result that the Senate like the Chambers had a party system of its own. It successfully claimed its authority over budgetary matters to the extent of increasing the budget demands as passed by the Chamber. It challenged the monopoly of initiation of Financial Legislation. On this point the position remained undecided and no specific policy was evolved.<sup>2</sup>

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1. A.B.Keith: Responsible Government in the Dominion, pp 114-15.
  2. W.L.Middleton: French Political System, pp 170-175.



Moreover, the Senate insisted that ministers were equally responsible to both the Chambers. In 1896, for the first time it compelled a ministry to resign on a vote of censure because he offended the senate by his revolutionary proposal for imposing an income tax law which was resented by the wealthy middle class and the commercial interests.<sup>1</sup> Again, in 1913, Mr. Briand on an adverse vote of the Senate on his proportional Representation Bill resigned voluntarily.<sup>2</sup> Mr. Harriot was dismissed on a direct vote of censure in March 1925 in spite of the fact that the Bill was passed by a majority vote in the Chamber.<sup>3</sup> Tardieu Government of 1930 retired after a vote of censure "It is like THE TIMES' pro-government with a conservative tendency...It is socially conservative intendency, bourgeois with pronounced distaste for adventure."<sup>4</sup> Joseph Aef Barthelomy Observed: "The Senate can thus have, and in fact does have a definite financial policy, which reveals itself by an undisguised hostility to systems of taxation with democratic tendencies. It is opposed to taxes on luxuries or to any kind of fiscal imposition, as witness its two rejections in 1907 of a tax on game preserves and of a tax upon deposits in credit Banks; it is hostile to fiscal reform of levelling tendencies, as witness its rejections in 1910 of an increase on the annual tax for multiple shops, an increase

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1. W.L. Middleton: French Political System, pp 180.
  2. Ibid, p 176.
  3. Ibid, p 176.
  4. Ibid, p 179.



which was proposed as a democratic measure in favour of the small shopkeepers. It resists reforms which would strike too hard on acquired wealth; it delays or whittles down any increase in the rights of succession or exchange; it has checked succession duties for only sons; finally and most important of all, untill 1917 it held out against a tax on revenue...It is opposed to nationalisation in all its forms. Forced by political necessity, however, it agreed to the State purchase of the Railway of the West...It took four years, three months and one week to consider the proposition passed by the Chamber relative to the weekly holiday. It retards the laws of so-called Workmen's protection. By the same procedure the Bill concerning retirement pensions was for four years removed from the Chamber's order of the day. As for the Bill of Retirement pensions for Railwaymen, the Senate kept it for seven years without putting it on its order of the day so that it was passed for the first time by the Chamber in 1897, it did not become law untill 1909. Thus when the Senate decides to pass a Bill the Chamber has to accept any modifications the senate has introduced into it, for fear that once returned to the Luxembourg it may lie there untouched for years.<sup>1</sup>

As a result of these conflicts, when the first constituent Assembly of France met in 1945, it decided in favour of a single chamber. But the draft was rejected at the polls. The Second assembly (1946) was more conservative and decided

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1. Joseph Bartholony: The Government of France. Translated



to have a Second Chamber to be known as the Council of Republic.

"It is however, doubtful, whether the French citizens would have voted for a Second Chamber had there been no fear of Communist ascendancy.<sup>1</sup>" The powers of the proposed Council of the Republic were drastically curtailed and whatever left were ' much narrower in scope than those which had been possessed by the Senate under the Third Republic, and indeed less extensive than the authority now exercised by the House<sup>2</sup> of Lords.

Thus  
We see that wherever the Second Chambers are elected and are composed of dissimilar elements - the conflicts over ordinary and financial legislation between them and the Lower Chambers have arisen as a natural consequence of co-ordinate authority, Restricted Franchise, higher age and property qualifications for the members, provided in the constitutional documents have given a definitely conservative Composition to the Second Chambers. In most cases, the second chambers have shown themselves averse to proposals of social and political Reforms; and in Financial matters they have consistently opposed the enhancement of the taxes. But it is in this respect that the Indian Council of State, in spite of being a conservative body, had struck a new course. Unlike most of these Senatorial bodies it neither opposed social reform measures passed by a substantial vote of the Lower Chamber, nor did it effectively protest against the enhancement of an old and imposition of a new tax.

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1. W.B.Munro: The Governments of Europe, p 401.

2. Ibid, p 358.

The reasons for this attitude of the Councils are not for to seek. The statutory relations between the executive and legislature and the ascendancy of the former over the latter were in a greater degree responsible for the novel phenomena.

The most distinguishing mark of the Act of 1919 was that it did not confer a dominion status on India. And as it did not confer that status, it did not gave to India what that states involved. Thus, though all the dominion governments are run in the name of the Governor General, and though he is a part of the legislative machinery, yet in actual practice the policies and acts of these Governments are framed and brought into operation by the Ministries who represent the majority party and are responsible to the Legislatures - generally to the Lower Chambers. Legally the executive heads represent the monarch, therefore they wield only those powers which the monarch wields in England, but the real authority is exercised by the Ministers. The Governor Generals of these dominions are virtually the titular heads of their Governments. In their choice of Ministers they are bound by the decisions of the majority parties in the Lower Chambers of the Legislature. Constitutionally no Bill passed by Legislatures can become an Act without receiving the assent of the Governor General but by a well-established conventions, they are bound to signify their assent when submitted to them. But in India the case was completely different. The actual as well as titular head of the Government was the Governor



General who was responsible to the British Parliament through the Secretary of State. His powers both in the Legislative and administrative fields were immense and real.

Though the Central Legislature was to legislate for the whole of British India, yet under severe restrictions. It had no power to amend and repeal any Parliamentary statute applicable to India, nor it could enact any measure abolishing a High Court without the sanction of the Secretary of State. Bills relating to public debt or revenues of India, religious rights and usages of British subjects, discipline and maintenance of armed forces, the relations of the Government of India with foreign and Indian States, amendments of Provincial laws or relating to Ordinances of the Governor General could not be introduced in the Legislature without the previous sanction of the Governor General. The Governor General at any stage of the consideration of a Bill, could stop the proceedings, if in his opinion it effected the 'safety and tranquillity of British India or any part thereof.' He could return a Bill for reconsideration, could reserve it for the signification of His Majesty's pleasure and could even veto it. The Governor General also had the positive powers of certification if any Bill rejected by the Legislature was in his view essential for the best interests of the country.

In the Financial field the Indian Legislature was given only nominal powers. The Governor General was required to

cause the annual statement of the estimated revenues and expenditure to be laid before the Legislature. The Budget could be discussed in a general way but only a part of it was subject to the vote of the Assembly and here also the Governor General had the power to restore any demand or any part thereof which was reduced or rejected by the Assembly. Over 80 per cent of the total budget was non-votable; "out of a total of 131 crores (excluding Railways) only 16 Crores are votable. Further, out of the non-votable amount, as much as 67 crores<sup>1</sup> ...are for military expenditure." These non-votable items covered some of the most important subjects like the salaries of the Governor General and his Executive Council; salaries and pensions of all persons appointed by His Majesty or by the Secretary of State; interest and sinking fund charges, salaries of Chief Commissioner and judicial commissioners and expenditure on ecclesiastical, defence and political affairs.

The Executive Councillors were neither the elected members of the Assembly, nor were they accountable to it. But the latter could criticise their actions reject or amend their proposals for legislation.

The creation of a Parliament such as was created by the Act of 1919, with certain powers and yet without responsibility raised questions of gravest difficulty. Giving his impressions to the House of Commons Sir Alfred Mond observed:

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1. Quoted by K.R. Bowbell: Indian Policies and Government, p 158.



" I remember very well listening to a Debate in the Delhi Assembly, when the Budget was thrown out by that Assembly. Members of the Assembly, one after another, got up and said that of course they could quite easily reject the Budget, because it was certain that the Viceroy would certify it and the country would go on just the same. That is one of the evils of divorcing responsibility from power....I am certain if some members had known that their action would mean the cessation of the machinery of government, the stoppage of the payment of salaries, the stoppage of the order and law in their country, they would never have taken the step that they took on that occasion. The mere creation of an Assembly that has no power and is <sup>in</sup> responsible, brings with it difficulties and dangers, and, one cannot, therefore, be surprised in any representative body to find a certain impatience and resentment of the fact that people are asked to come and spend many months taking part in debates the result of which will, they know before they begin, be practically nugatory."

Such was the attitude of the Lower Chambers in general, on Bills which were proposed to be enacted by the Government. The criticism and opposition of measures from the point of view of every class of society, whether poor or wealthy, was almost complete in the Legislative Assembly. The Council of State

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1. Quoted by T. Rangacharir; Legislative Assembly Debates Official Report dated 8th September, 1925, pp 887-888.

was used by the Government to redress the unfortunate effects of the precipitate decisions of the Lower Chamber. As a revisionary body, it was the duty of the Council of State to revise the decision of the Assembly and to help the executive which was not responsible to the Legislature according to the statute. Being a comparatively conservative body by composition, a cooler atmosphere and serious outlook prevailed in the Council. Having a substantial nominated element, it could more easily decide the cases in favour of Government than the Lower House. Thus the 'Common practice' of coming into conflict of the Upper Chambers with the Lower and at the same time with the Government was somewhat modified in India. The Second Chamber of the India Legislature came into conflict with the Assembly without involving the Government into it. It was thus a novel development and a creation of the peculiar circumstances produced by the Government of India Act of 1919. To the same reason, may be attributed the difference between the attitude of the British Indian Upper Chamber and those of other countries, on matters of taxation and enhancement of duties, which were generally opposed by the latter but were passed by the former. On certificated legislation, whether financial or ordinary, the Council's competence to amend, was restricted by section 67B of the Government of India Act. It could, however, reject it, but this was practically impossible



because of the presence of a strong nucleus of support that the nominated element provided to the Government.

Another redeeming feature of the composition of the Council of State was that it never allowed itself to become a party instrument which is often the case with elected Second Chambers. For this non-partisan character, nothing else was responsible than its own franchise. Thus while the Assembly often became a toy in the hands of Swarajists and others similarly inclined, and freely took irresponsible decisions against the Government, the C.S. represented the element of stability in the Indian Society. In the Dominions where artificial harmony is created by the system of direct elections, the importance and dignity of the Upper Chamber automatically decreases. These upper chambers generally became mere pawns in the hands of the ruling parties. Their social prestige and moral influence of elderly statesmanships are lost as soon as party machinery attempts to take hold of them. It was mainly because of losing its social dignity that the Belgian Senate in a span of 63 years (1831-1893) could hardly reject only 3 important measures out of 3,500 which were transmitted to it by the Lower Chamber. Between 1893 and 1912 out of 953 Bills passed by the Chambers, it amended 25 and rejected none. " The election results of November, 1921, clearly indicate that the party position in the two Chambers was proportionate to each other. Thus on strictly party basis, the Senate could be counted upon to duplicate the action of the Lower House. The only advantage accruing



from the system of categories and co-option have ensured a high level of capacity.<sup>1</sup>"

The same is the case with the Australian Senate. Sir Henry Barwell in his evidence to the Royal Commission made a reference to the Control of Senators by the national parties as early as 1929 and conferred that "there is to a greater or less extent a general caucus control."<sup>2</sup> Later senator Keating noted that: "The Senate is rushing into extinction every time it goes into caucus, because even if unanimous, it goes into caucus into minority, and would be simply preparing its own death warrant by opposing the Government there. I never could see why members of the Senate attend those meetings<sup>3</sup>"

But in the Council of State, there were no strict party ties. Most of the members were independent, and owed attachment to economic as religious institutions. No political party had any control over them. It was as late as 1926, that a Swarajist group of nine members made for the first time its appearance as a real political group. Its strength never rose beyond that. It was however in 1932 that the opposition under the name of progressive party was formed which included a substantial number of elected members and controlled their activities in the Council of State. But even this larger group could never occupy a dominating position in the Council, firstly

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1. T.H. Reed: Government and Politics of Belgium, pp 82-83.

2. Report of Royal Commission on the Constitution, Evidence, p 974.

3. Quoted by Crips: Parliamentary Government of the Commonwealth of Australia, Appendix A, p 296.



because all the elected members did not join it and refused to submit themselves and their actions to any control. They were not therefore prevented in the judgement of questions, by the party discipline and caucus control. Secondly, absentees being more numerous in the elected contingent, the Government, supported by officials, nominated non-officials and few elected members had always a working majority in the House. The progressive party, which could in no way be described as an opposition party, disintegrated in 1938 when Mr. Hossain Iman formed his separate group of Muslim Leaguers under his own leadership. These incidents made it impossible for the Council to become a mere party machinery.

Its services as  
a Second Chamber

The C.S. played the role of a  
revising chamber more freely in

connection with the private legislation generally aimed at the social reform of the Hindu Community. By going through the debates of the Council one cannot deny the application of certain principles which were consistently pursued by the Council in connection with such measures. Broadly speaking it applied the following tests to each piece of private legislation that came to it from the Legislative Assembly for approval. It would want to be satisfied: (i) That the proposed legislation was not passed in purely partisan spirit, and in a hurry. (ii) That the proposed measure was amply supported by a substantial

majority of the Lower House. (iii) That the demand for such enactment was persistent and real. (iv) That the controversial measures have received enough opportunities of discussion in the House and outside by interested parties and their opinion freely expressed (v) That the measures would not create any serious opposition which might result in political upheaval. The Council, after judging them on the basis of the above principles, never refused to pass any measure which was in accord with them. Thus measures like Child Marriage Restraint Act, 1929, The Hindu Women's Right to property Act, 1937; the Hindu Women's Right of Inheritance (Removal of Disabilities) Act, 1938, and the Hindu Law of Inheritance (Amendment Act) 1938 were passed with the real and whole hearted support of the Council.

Social legislation in India was and still is the most controversial subject of legislation. It is so, mainly because of its close connection with the religious beliefs of the Hindu community. Composed as it was, it was neither possible nor proper for the Council of State to initiate such legislation. It was more appropriate for the members of the more popular House who had a direct mandate from the people to take a leading part in such proposals. Whenever such initiative was taken by any member of the Council, the Council either openly rejected the proposal altogether or subjected it to such an unlimited delay that under the rules of business it virtually



died itself. Consequently its members were rather reluctant to propose such measures of far reaching importance. This was the fate of Polygamous Marriage Regulating Bill, 1938. Another Bill was withdrawn by the mover after the motion for reference to the Select Committee was carried in the House. Mr. G.S. Motilal's Hindu Women's Right to Property (Amendment) Bill which was circulated for elicitation of public opinion, lapsed under the rules of business. The policy of the Government in this connection, which was accepted by the Council was to oppose any legislation which was bound to go to the very roots of social habits and religious beliefs of the people, unless it was clearly proved that the majority of the people concerned, demanded it. The Councils ~~at~~ initiative in this field was therefore decidedly far more restricted than that of the Legislative Assembly.

But Bills aimed at social reformation of minor importance and of comparatively non-controversial nature were successfully originated by the Council and thus it saved much of the valuable time of the Lower House. Such measures included beside others, Dargah Khwaja Sahib Bill, Parsi Marriage and Divorce Act, Muslim Dissolution of Marriage Act, Cutchi Memon Act.

The Council passed a large numbers of Bills regarding the amelioration of the Labour and its relations with the management. Both the Chambers of the Indian Legislature, so far as the Labour problem was concerned had the same views and the policy of the Government who commanded the confidence of the

Council, was backed by both of them. The Council of State concurred in the decisions of the Assembly on Trade Unions Act, Workers Compensation Act, Breach of Contract Repealing Act, Indian Factories Act, Employers and workers Disputes Act, Tea Districts Emigrant Act, - to name only a few of the most important Bills.

In the field of Law and Order and particularly in matters of Criminal legislation, the Council of State accepted the decisions of the Lower Chambers in most cases. It differed only on few occasions. Between 1921 and 1928 the area of agreement between the Council of State and the Legislative Assembly kept on expanding. It approved the decisions of the Assembly on measures establishing the competence of the Chartered Courts and Chief Courts to punish the contempts of courts. Documents tending to rouse communal or religious feelings were made penal and vagrants were to be penalised with rigorous imprisonment. Special laws arming the executive with powers in emergencies were scrutinised and some of them were repealed. The press Act was repealed and Discriminatory treatment between European and British Indians subjects in Criminal cases was removed. Facilities for defence of the accused were enhanced by amending the criminal procedure code. These are few of the important measures on which the two Houses agreed.



It was in the later years that the Press Act of 1931 and the Criminal Law Amendment Act of 1932 were passed by the Legislative Assembly for a duration of three and four years respectively and assented to by the Council of State. But when a consolidating measure, amalgamating these two temporary Acts and seeking to make them permanent was brought before the Assembly, it subjected it to a severe examination and refused to pass it in the form, the Government desired. The Bill was certified and the Council of State passed it, thereby giving a different decision and disagreeing with the judgement of the Legislative Assembly.

Between 1921 and 1945, 25 Finance Bills were passed by the India Legislature, out of which the Council of State endorsed the decision of the Legislative Assembly on 16 occasions and reached different conclusions on nine occasions. All the tariff measures, which formed the annual regular feature of the proceedings of the Indian Legislature, were passed by both Chambers unanimously and in the entire history of the reformed Indian Legislature, it was only in 1939 that the two Houses arrived at different conclusions. The Council of State rejected those Bills, initiated in the other house by private members, which were concerned with the Law and Order situation.

In the Delhi Session of the Assembly in 1924, first time after the entry of Swarajists, a number of important Bills

were introduced by private members. Mr. T.Rangaohariar introduced his Bill to regulate the Code of Criminal Procedure so as to regulate the use of fire-arms in dispersing unlawful assemblage. Mr. K.Ramaswami Aiyanger introduced a Bill to amend Indian Regulation and Evidence Acts. Sir Hari Singh Gour introduced a Bill to amend section 375 of the Indian Penal Code so as to raise the age of consent from 12 to 14. By another Bill Dr. Gour wanted to repeal the Criminal Law Amendment Act. One controversial measure was introduced by Mr. K.C. Neogy to prohibit the reservation of compartments for Europeans only. Mr. V.J. Patel was the author of a Bill designed to Repeal the Bengal, Madras and Bombay States prisoners Act of 1850, and the prevention of Seditious meetings Act of 1921.<sup>1</sup>

Out of these, the Council of State rejected only five Bills.<sup>2</sup> This was the failure of Diwan Bahadur T.Rangacharian Bill, of Mr. V.J. Patel's special Laws Repeal Bill, of Sir Hari Singh Gour's two Bills and of Mr. Neogy's Bill.<sup>3</sup> Thus in this field of private member's Legislation dealing with Criminal Laws the extent to which the Council of State met the wishes of the Legislative Assembly was fairly wide. But the Council refused to give its assent to Bills which were designed to endanger the law and order situation of the country and which were vehemently opposed by the Government.

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1. India in 1924-25: pp 111-115; 335-36, and 61.

2,3. Memoranda

pp 44-45.



In matters not connected with Criminal Law, the Council of State generally approved the action of the Lower Chamber of Bills initiated by private members. Apart from these, the Act enabling Licensed Mukhtars to practice in Criminal Courts as a matter of right; the Act permitting political Associations to register themselves as societies, the Act admitting the Marriage by Civil Contract of Persons professing particular religions; the Act permitting retaliation in India against the nationals of a country imposing disabilities on the inhabitants of Indian Domicile, the Forest Law and the Law of Succession, were ~~at~~ passed at the instance of private members, of the Lower House.<sup>1</sup>

One of the unique features of the working of the Council of State, which has been lost sight by its critics generally, is the role it successfully played as a mediating Chamber between the Government and the Legislative Assembly. Several Legislative proposals passed by the latter body in a manner unacceptable to Government, were amended by the Council of State, keeping in view the wishes of the Government. In the meantime wiser Councils had prevailed, with the result that the Assembly revised its previous decisions and thereby virtually acquiesced in the decision of the Council of State. The occasions on which the Council acted in that capacity were few, but nonetheless significant because many a constitutional crisis necessitating the use of extra ordinary powers of certification were averted. The Finance Acts of 1921,

1922, 1925, 1927, were the results of the mediation of the Council of State. Successful enactment of some social reform measures, initiated by private members of the Legislative Assembly, like the Hindu Women's Right to property Bill, 1928, and the payment of wages Bill owed their form to the efforts of the Council in the direction of compromise between the Government of India and the Legislative Assembly.

The Council of State was able to get more time for non-official business and resolutions, through which it availed itself of discussing fully and freely those problems of the country, which were being overlooked by the Legislative Assembly because of its political and constitutional tussle with the Government of India. Till 1932, the Council discussed as many as 361 problems regarding the social, political, cultural, economic and the constitutional policies of the Government of India. Of this number the Government accepted as many as 74 resolutions, 36 of which were moved by Private Members. The most numerous class of resolutions, which were passed by the Council of State and accepted by the Government, were concerned with commercial and Industrial questions, which received little or no attention of the Legislative Assembly and were virtually left to the care of the Council. The Council of State by paying due attention to these matters, did not only play the role of a true second chamber, but also



performed an excellent service to the nation. Of these the most important were those which concerned the Fiscal autonomy; exemption of Magistrates and Members of India Legislature from the operation of the Arms Act, Uniform system of weights and measures, Indianisation of services, Establishment of the Committees of petitions of both Houses of the India Legislature, Royal Commission on Agriculture, Bounty on steel manufactured in India, Banking legislation Road Development, Moderation in the use of Alcoholic drugs etc.etc. The little use that the Council made of the right of moving the motions for the Adjournment of the House, was in keeping with the tradition of the Upper Chambers. The use of this power which was made on 7 occasions between 1921 and 1936 shows that the Council refrained from moving such motions on every trivial matter, which was really commendable to other legislatures in India and elsewhere.

Similarly the number of questions withdrawn by members of the Council and of the questions disallowed was for lesser than those in the Legislative Assembly. This feature indicates the sense of clarity and responsibility of the Councillors in the matter of interpellations.

The Government of India treated the Council as far as possible, like a real second chambers. Important Bills were first introduced in the Lower Chamber but it was only in a

a few extreme cases that the decision of the Council of State was taken by it as final. On a suggestion made in 1933, that important Bills should be initiated in the Council of State, the Government warned the House, that such a procedure, if adopted would prejudice the chances of the Government for securing legislation from the Lower House, similarly they refused to accept the suggestion that all official Bills should be necessarily referred to joint Select Committees of the two Houses, whether the Lower Chamber agreed to the formation of such committees or not. They recognised the fact that the privileges and dignity of a revising chamber put certain limitations on the part it can play in moulding the legislation of the country.

The difference in the composition of the two Houses and the consequent difference in their outlook was visualised by the authors of the Act of 1919. The Government of India Act had provided for Joint sittings of the two houses and joint Select Committees if necessary. The former device, however, was ~~the~~ never practised while the latter were adopted on 18 occasions till 1923. In 1933, Mr. Hossain Imam, complained of the attitude of the Assembly which *was* not willing to appoint such committee on any occasion in a span of the past ten years. The passage of certificated Bills rejected by the Lower House, added fuel to the fire so much so that the members of the Assembly and nationalist circles began to denounce the Council of State as a body of



abscuratists and reactionaries, which has no object but to support the Government in season and out of season, and is always ready to set aside the decisions of the popular representatives. But it was a conclusion which was based more on emotions, than on reason. It was based upon the immediate reaction and not on a careful and painstaking study of the subject. The Council of State, both by its composition and working was nearer to the ideal set by the Bryce conference than many others, in spite of the failures, if they may be so designated, <sup>which</sup> were not the features of the Council of State alone; but, these were the features which are discefnable in the composition and working of the second chambers everywhere. The role that the Council of State played is best illustrated by what was said by Lord Chelmsford to the members of the Council: " Consisting as it does of members of proved experience in many walks of life, its balanced judgement on the problems that have come before it and the pains which it has invariably taken to reach a just and objective decision on the many controversial issues with which it has been faced entittle it in a high degree to our gratitude and our esteem. " <sup>1</sup>

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1. Quoted by the President (Sir M.B. Dadabhoy) in his farewell speech to the third Congress Session, dated 17th October, 1936, p 543.

Rajya Sabha — the Successor

(Impact on the constitution of the Council of States)

Another term:

Before proceeding to examine the impacts of the Council of State over the present Second Chamber of the Indian Parliament, it is necessary that certain important features of the constitution with reference to their political background should be mentioned. The first and foremost historical fact is that our present constitution and the various agencies of the Government, which have been established by it, are the successors of the Government of India Act, 1935, which never came into operation in the Federal sphere. Thus for all practical purposes, it is the Government of India Act of 1919 which is the real predecessor of the Central arrangements. Prior to the operation of the new Union Constitution - before, 1950 - India was for constitutional purposes, a unitary state with the Federal bias. Its component parts known as provinces, were enjoying internal autonomy under the Act of 1935, as a result of a long drawn out process of devolution which started in 1909 and culminated in 1935. This progress of our constitutional development from a unitary to a Federal polity is unique and it has affected the position of our present second Chamber in a number of ways.



The formation of Federation as it is generally understood, is the manifestation of a desire on the part of previously independent states of a Geographically contiguous areas, to unite <sup>for</sup> certain purposes and yet to preserve their separate identity. Such is the case with American Canadian, German and Swiss federations. But the Indian Provinces, on the contrary, never, since the establishment of British Raj, possessed an autonomous status. It was for the first time that in 1935, an autonomy was conferred upon them.

Culturally, each of these provinces had some distinctive features of their own which differed from those of others. But even here the division was not complete and the areas which culturally should have formed the real part of one was under the jurisdiction of the other. The division of the country into separate provinces was made according to the administrative convenience of the rulers, and was not based on any of the set principles of culture and language.

The common religion and religious practice, social customs, traditions and racial contiguity of the bulk of the population dominated by one and the same power of British Rule, helped in bringing the people together. At the same time it prevented the units of the Indian Federation, to claim the absolute equality in federal arrangements.

As a result of these realities, our constitution has modified the strict federal principles in various ways. It creates a federal state with a subsidiary unitary bias. That the Draft Committee had purposely refrained from using the word 'Federation', is not without significance. It felt that it would be more advantageous to describe India as a 'Union' although the constitution is federal in structure. This unitary bias and the purposeful omission of the word 'Federation' are responsible for the fact that the component parts of the Federation have not been given the right to frame their own constitutions except Kashmir. Nor do they enjoy the right of secession as is the case with the States of America and Soviet Russia. To quote Dr. Ambedkar, "the constitution of the Union and the States is a single frame from which neither can get out and within which they must work<sup>1</sup>." The constitution does not recognise double citizenship and it is due to withholding this recognition that all loyalties and allegiance of Indian citizens belong to the Indian Union and there is no question of sharing them with the states as is the case in USA and Australian federations.

These considerations have prevented the framers of our constitution from adopting the constitutional practice of USA, Soviet Russia and other typical federations of providing

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1. Constituent Assembly Debates, Official Report, Vol.VIII, p 34.



for each and every federal unit an equal number of seats in the Upper Chamber of the Legislature; irrespective of differences in their size and population. The representation to the units is given on the strict basis of their population as is the case with the House of peoples. Instead of emphasizing the principle of diversity, it has laid overwhelming stress on the unity of the nation, because according to its framers, "the diversity may be welcomed as being an attempt to accommodate the powers of Government to local needs and circumstances. But this diversity when it goes beyond a certain point is capable of producing chaos and has produced chaos in many Federal States.<sup>1</sup>" Thus the one great benefit that the new constitution has derived from the composition and working of the Council of States is the minimisation of diversity as against unity.

The constitution provides that the Council of States shall consist of not more than 238 representatives of the states, beside 12 others to be nominated by the President in accordance with the provisions of clause 3 of Article 80. Hence the Council still retains a nominated element though its strength has been reduced from 43-1/3 per cent to 4.8 percent of the total membership. But the discretion of the president in this regard has been subjected to restrictions that such nominees should possess special knowledge or practical experience of science, literature, art

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1. Dr. Ambedkar: Constituent Assembly Debates, Vol. VII, p 36.

and social service. Thus the framers, by retaining the nominated bloc, have incorporated certain features of the constitution of Eire and those of South Africa. They have adopted the system of nomination to represent the experience and services from the Eire and indirect election by State Assemblies from South Africa. But the heterogeneous composition is as much open to criticism as was the constitution of the Council of State. Indirect election, by a handful of electorate may lead to corruption,<sup>1</sup> and nomination may be said to militate against the symmetry of the constitution which upholds the system of democracy.

The allocation of seats in the Council of States as originally constituted, was in accordance with the provisions of the Fourth schedule. This was subsequently amended on the recommendation of States Re-Organisation Commission and is as follows:

Andhra Pradesh.	....	....	18
Assam.	....	....	7
Bihar.	....	....	22
Bombay.	....	....	27
Kerala.	....	....	9
Madhya Pradesh.	....	....	16

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1. Commentry on the Constitution of India: D.D.Basu, p 314.



Madras.	....	....	17
Mysore.	....	....	12
Orissa.	....	....	10
Bunjab.	....	....	11
Rajasthan.	....	....	10
West Bengal.	....	....	16
Jammu and Kashmir	....	....	4
Delhi.	....	....	3
Himachal Pradesh	....	....	2
Manipur.	....	....	1
Tripura.	....	....	1
Nominated by the President.	....	....	12
Total			232 *

In the Council of State there were only two members, representing as much as half of the total electorate residing in Burma and, 32 were the representative of British Indian electorate spread over the remaining sub-continent. The new constitution, on the one hand brings the membership in proportion to the electorate and on the other hand by retaining the unequal representation, it has enlarged the representation of each state.

So far as the Legislative powers are concerned, both Houses have co-ordinate authority and the legislation is generally introduced in the Lower Chamber as it was the case during the British

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1. India, 1958: A Reference Annual compiled by Research and Reference Division, Ministry of Information and Broadcasting, pp 49-51.

period.

As regards the resolving of deadlocks is concerned, the same provisions as were embodied in the Government of India Act, 1919, have been reproduced except that no provision exists for Joint Conferences.

As the Council of States is not based on the strict Federal principle of the equality of States; and as the experience of federal countries having a second chamber, shows, that, even if based on that principle, they have virtually ceased to be representative of units as against the parties, The only function ~~of~~ left to the Second Chamber is, therefore, that of revision of measures, imposition of a limited delay to hasty and ill-considered legislation and the consideration of problems for which the popular House gets little or no opportunity and initiation of comparatively non-controversial legislation. These functions do not require the Second Chamber to have co-ordinate authority with the first. It would be an important improvement upon the work of the old Council of State and also in accordance with the accumulated experience of the working of Second Chambers elsewhere, if the provisions of the Parliament Act, 1911, as amended in 1949 have been inserted in the constitution by putting a time-limit for passage of Bills by the Council.

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1. In this connection see Federalism and Constitutional Change, by William S. Livingston (1956) p



In so far as the provisions regarding Money-Bills are concerned, the constitution has made definite improvements upon those of the Act of 1919 and 1935. Following the recommendation of the Bryce Report, Art. 109 of the Constitution provides that a money bill should originate in the Lower House. The Council of States has been given no power to reject or amend such Bills. What it can do at the most, is to suggest or make recommendations which may or may not be accepted by the Lower House. The idea of suggestion is taken from the constitution of the Commonwealth of Australia and that of Eire, where it is provided that the *Senad Eirran* should return the Money-Bill within 21 days of its submission, with or without suggestions. If it fails to return the Bill within that period, or returns it with suggestions which are unacceptable to the Dail, it shall become law after the expiry of that period.<sup>1</sup> But the power of the Council to delay is lesser than that of the *Sennad Eirān*. It can hold up a Bill only for two weeks.

The Council of States like its predecessor has not been given an elected president. On the other hand like the president of the American Senate, the presiding officer is the Vice-President<sup>2</sup> of the Indian Union. He is elected by both the Chambers. The main objection to this procedure is that the president of the

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1. The Irish Free State: Its Government and Politics, by Nicholas Mansergh, p 96.

2. Articles, pp 66-67.

Council is virtually the choice of the Lower Chamber, because in his election, the latter body plays a more decisive role due to its numerical preponderance than the Council. The Deputy Chairman is the choice of the Council itself and both the Chairman and the Deputy Chairman are removable by the majority of the total membership of the Council, but for the former a resolution of the Lower Chamber is also necessary.

The present Council, unlike that of 1919, is not subject to dissolution, but  $\frac{1}{3}$  of its members retire every Second year. In this respect our constitution has adopted the plan embodied in the Government of India Act, 1935, for British Indian representatives. As a result of this provision, the Upper House in India<sup>1</sup> is a permanent body, though the House of people may stand dissolved at intervals. This constitutes a definite departure from the Indian Constitutional practice, as under the Act of 1919 the Governor General could dissolve any one or both the Houses of the India Legislative. In this regard, we have not even followed the English constitutional precedent, where between the interval of dissolution and re-election of the House of Commons, there exists no House of Lords untill a new Parliament is summoned.

The President has a right to send messages at the commencement of each session and he can even address the Council personally.

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1. Articles 85.



The constitution follows the practice obtaining in the British Indian Legislature wherein the executive councillors and Attorney General were entitled to participate in the proceedings of either House, without the right to vote, except in the Chamber to which they were nominated as members. The Constitution in this respect follows the practice of South Africa and Irish Parliaments.

Thus our present Council of States, in so far as its constitution provides for indirect election, limited nomination, abolition of property and wealth qualifications, periodical and partial renewal, curtailment of Financial powers, is a definite improvement upon the old Council of States. But so far as inequality of state's representation, the right of Ministers and President to address the Council, the provisions regarding the Joint sittings and dead locks, and above all the equal legislative powers are concerned, it tends to be more and more analogous to its predecessor. But the improvements that the constitution has made also owe their existence to the accumulated experience of 25 years of working of the Council of State. The fact that no conflicts of authority have so far arisen between the two Chambers of the Indian Parliament, is primarily due to the predominance of one single party in both of them. But the eight years harmonious working of the Parliament does not provide an

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1. Articles 86, 87, and 88.

ample guarantee that the Council will be content with the role of a purely revisionary body even when it will differ in its political complexion from that of the Lower House. However, it remain a fact that whatever success the Rajaya Sabha has achieved as a result of its constitution is mainly due to the experience gained by the working of the C.S. under the Act of 1919.

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TERMIZI.



# APPENDIX A

Return showing the results of Elections in India 1929 - 1930 presented by the Secretary of State for India to Parliament by command of His Majesty, July, 1931.  
Printed & Published by His Majesty's Stationary Office, London.

Place & Class of Constituency	COUNCIL OF STATE						Total No. of Electors Voted.	Percentage voted	Percentage in 1925.
	No. of Seats	No. of Seats filled without Contest.	No. of Candidates	Total No. of Electorates.	5	6			
<u>I</u>	2	3	4	5	5	6	7	8	
<u>MADRAS</u>									
Non - Mohammedan	4	Nil	5	3043	2398	78.0	84.0		
Mohammedan	1	Nil	2	153	133	86.0	92.0		
<u>BOMBAY</u>									
Non - Mohammedan	3	Nil	4	2147	1039	84.4	86.0		
Mohammedan	1	Nil	2	240	200	83.3	92.0		
-do- Sindh Chamber of Commerce	1	Nil	2	383	35.6	92.9	-		
	1	1	1	98	-	-	-		
<u>BENGAL</u>									
East Non - Mohammedan	1	Nil	2	617	200	32.4	78.5		
West	2	Nil	4	928	758	81.6	61.0		
East Mohammedan	1	1	1	736	X	X	61.0		
West	1	X	2	251	172	86.5	83.0		
Chamber of Commerce	1	1	1	210	X	X	X		
<u>UNITED PROVINCES</u>									
North Non - Mohammedan	1	1	3 <sup>1/2</sup>	1313	X	X	X		
South -do-	1	1	2	788	388	49.2	X		
East Mohammedan	1	1	1	244	X	X	X		
West -do-	1	X	3	335	233	69.5	77.0		



I	2	3	4	5	6	7	8
<u>P U N J A B</u>							
Non - Mohammeda	I	I	I	1016	Nil	-	-
East Mohammedan	I	X	2	479	406	84.7	66.0
West Mohammedan	I	X	2	729	587	80.5	73.0
Sikh	I	I	I	673	X	X	
<u>B I H A R &amp; U R I S A</u>							
Mohammedan	I	X	3	461	350	75.9	83.0
Non Mohammedan	2	X	3	2084	960	46.1	79.0
<u>CENTRAL PROVINCE.</u>							
General	I	I	I	662+	X	X	70.0
Herar General	I	I	I	402+	X	X	X
<u>ASS A M</u>							
Non-Mohammedan	I	I	2++	594	X	X	X
<u>B U R M A</u>							
Chamber of Commerce	I	I	I	71	X	X	X
General	I	3	X	20583	2925	14.2	5.0
T O T A L	34	15	53	40513	11104	33.4	34.0

\* - Two Candidates withdrew

+ - These figures are the same as in 1925 as the Election was held on the Old Electoral-Roll prepared in 1925.

++ - One Candidate retired.

Old Electoral-Roll



## APPENDIX. B

Statement completing the information contained on pages 623 to 627 of the Council of State Debates, dated 21st March, 1927, and pages 3147 to 3150 of the Legislative Assembly Debates, dated 27th August, 1927, regarding the action taken by Govt. since then on the Resolutions adopted by the Council of State since its inception to the 21st Sept. 1932.

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1. The Hon'ble Lalubhai Samaldas moved a resolution on 23rd Feb. 1921 Reg. the Fiscal Autonomy.  
Given effect to in full by the Govt of India.

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2.    ::       Maung Po Bye moved a resolution on 28th Feb, 1921, Reg. the MBurns Reforms Scheme.  
The Committee's Report was received and the reforms have since been introduced.

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3.    ,,       V.S. Sastri moved the resolution on 3rd March, 1921 Reg. the amendment of certain enactments in regard to the use of the firearms.  
A Bill was introduced and passed in the Council of State in Sept. 1921. On further examination Govt did not find it feasible to provide satisfactorily by legislation for a principle which had hitherto been regulated by executive orders and the matter was not proceeded with.

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4.    ,,       Lala Sukhbir Sinha moved the resolution on 26th March, 1921, Reg. the exemption of the Magistrates and members of the Indian Legislatures from the operation of the Arms Act.  
Local Govts were consulted in the matter. They were practically unanimous in opposing the proposal to extend exemption to magistrates and members. The matter was referred to the Arms Rules Committee of 1922 who recommended the exemption of members of Legislature during their term of office and six months thereafter but did not recommend exemption of members of Provincial Legislative Council or of magistrates. The recommendations of the Committee were accepted by the Govt of India.

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5.    ,,       Dr. Ganga Nath Jha. moved the resolution on 23rd Sept, 1921, Reg. the uniform system of weights and measures.  
Given effect to in full vide resolution No.9, dated the 3rd Jan. 1922, published in the Supplement to the Gazette of India of the 7th idem.

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6.    ,,       P.C. Sethna moved the resolution on 27th Sept, 1921. Reg. the administration of Aden by the Govt of India.  
The Resolution was transmitted to the Secretary of State.

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7.    ,,       H.A.F. Lindsay moved the resolution Reg. the limitation of hours of work in fishing industry on 27th Sept 1921.  
The resolution was accepted by the Govt of India.

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## II

8. ,, H.A.P. Lindsay moved the resolution on 27th Sept, 1921, Reg. the Establishment of National Seamen's Code  
The resolution was accepted by the Govt. of India.  

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9. ,, H.A.P. Lindsay moved the resolution on 27th Sept. 1921, Reg. the unemployment insurance for Seamen's .  
The resolution was accepted by the Govt of India  

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10. ,, H.A.P. Lindsay moved the resolution on 27th Sept, 1921, Reg. the minimum age for admission of Children to employment at sea.  
The Govt. of India notified the ratification of the convention subject to the reservations mentioned in the resolution as adopted by the Council of State. . . . . An omnibus Bill was introduced in the Legislature in 1931 and after being duly passed, it was enacted as the Indian Merchant Shipping (Amendment) Act, 1931.  

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11. ,, H.A.P. Lindsay moved the resolution on 27th Sept, 1921, Reg. the Unemployment indemnity in case of loss or foundering of a ship.  
The Govt of India undertook to amend the Indian Merchant Shipping Act according to the resolution. The Act was amended in 1931.  

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12. ,, H.A.P. Lindsay moved the resolution on 27th Sept, 1921, Reg. the Facilities for finding employment for Seamen.  
As a result of the recommendations of the Seamen's Recruitment Committee, 1922, the superior staff in the Shipping Offices at Calcutta and Bombay has been strengthened and revised system of recruitment was introduced .  

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13. ,, Phiroze C. Sethna moved the resolution on 26th Jan, 1922, Reg. the Increase on the appointment of Indians in Port Trusts .  
The resolution was accepted by the Govt of India. And as a result the various Port Trust Acts of the major Ports with the exception of Aden and Chittagong were amended to provide for increased representation of Indian Commercial Bodies on the Port Trusts. Chittagong was declared to be a major Port in April, 1923, and the constitution of the Port Commission was amended in the light of the above resolution.  

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14. ,, Lalubhai Samaldas moved the resolution on 15th March, 1922, Reg. the Carriage of Govt. and Railway materials by Indian Shipping Companies  
The resolution was accepted by the Govt of India and the authorities concerned were asked, where possible, to give Indian Shipping Companies an opportunity in future for tendering for the Carriage of Govt Stores .  

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15. ,, Lalubhai Samaldas moved the resolution on 16th March 1922, Reg. the Shipping Industry in India.  
The Indian Mercantile Marine Committee was appointed in Feb. 1923, 'Interalia' to consider what measures could usefully be taken for the encouragement of Shipbuilding in India.  

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16. ,, H.A. P. Lindsay moved the resolution on 19th Sept, 1922, Reg. the Limitation of hours of work on inland navigation.



### III

The resolution was accepted by the Govt of India. A copy of the resolution was also communicated to the Secretary General of the League of Nations.

17. .. H.A.F. Lindsay moved the resolution on 19th Sept, 1922, Reg. the Trimmers Stokers and Children employed at Sea.  
The Conventions on the subjects were ratified with the approval of the Indian Legislature and the Indian Merchant Shipping (Amendment) Act, 1931, was enacted to give effect to the provisions of the Convention.
18. .. H.A.F. Lindsay moved the resolution on 19th Sept, 1922, Reg. the Weekly rest day in commercial establishments.  
The resolution was accepted by the Govt of India and action taken accordingly. A copy of the resolution was communicated to the Secretary General of the League of Nations.
19. .. V.G. Kale moved the resolution on 25th Sept. 1922, Reg. the collection, compilation and publication of statistics relating to the economic, social and constitutional progress in India.  
The Director General of Commercial Intelligence and Statistics was asked to examine all the publications of the Department of statistics with a view to seeing that as far as possible the statistics in their new and simpler form would meet all practical requirements.
20. .. Sir Dinshaw E Wacha moved the resolution on 16th and 19th Feb, 1923 Reg. the Census of production of British India.  
A consolidated publication entitled Statistical Abstracts for British India containing all the statistics as desired is published annually.
21. .. Sir Maneckji. B. DadaShoy moved the resolution on 5th Feb. 1924, Reg. the Award of the Noble Prize for peace to RYM. the Aga Khan  
A certified copy of the resolution together with a copy of the debate on the subject was forwarded to the Secretary of the Nobel Committee of the Norwegian Parliament, for information.
22. .. J. Grerar moved the resolution on 11th March 1924, Reg. the Ratification of the International Convention for the suppression of the circulation of , and traffic in , obscene publications.  
The Govt of India intimated to the Secretary of State their agreement that the Convention should be ratified on behalf of India, and the amendments made in the I.P.S. and Code of Criminal procedure by the Obscene Publications Act, 1925.
23. .. D.E. Chadwick moved the resolution on 4th June, 1924, Reg. the Removal of Import duty on Sulphur. \*  
A notification No. 2238, dated 9th June, 1924, under the Sea Customs Act, was issued exempting Sulphur from Import duty.



#### IV

24. ,, J. Crerar moved the resolution on 15th and 16th Sept, 1924, Reg. the Recommendations of Lee Commission .  
The outstanding action on part 3rd of the resolution was taken.
- 
25. ,, Sir. Md. Habibullah. moved the resolution on the 17th Feb, 1925, Reg. the re-Appointment of a member of the Council of State to the Governing Body of the Lady Haringe Medical College .  
A member of the Council of State was nominated by the Govt of India serve on the Governing Body of the said College as a representative of that House.
- 
26. ,, Phiroze. C. Sethna moved the resolution on the 8th Sept, 1925, Reg. the Indianisation of the Staff and establishment of the High High Commissioner for India in U.K.  
A copy of the debate was forwarded to the High Commissioner and he was informed that the Govt of India agreed with the principle involved in the resolution. He had given effect to the wishes of the Govt of India in the matter.
- 
27. ,, D. T. Chadwick moved the resolution on the 9th Sept, 1925, Reg. the Bounty on steel Manufactured in India.  
The Tata Iron and Steel Company Ltd. was the only Company that fulfilled the conditions subject to which the payment of bounty on steel manufactured in India was recommended. This Company was paid ~~xxix lakhs~~ 18 1/2 lacs on this account during the six months ending March, 31, 1926 and 41 1/2 lacs during the 1926-27, i.e. the maximum total of rupees sixty lacs recommended by the Council.
- 
28. ,, J. Crerar moved the resolution on the 11th and 12th Sept, 1925, Reg. the Recommendations of the Majority Report of the Reforms Enquiry Committee.  
Action taken by on the recommendations of the Committee is set out in pages 213-290 of the volume containing the Memoranda submitted to the Indian Statutory Commission by the Govt of India.
- 
29. ,, Dr. Sir Devaprased Sarvedikary moved the resolution on 15th Sept, 1925, Reg. the work done by the Central Govt in connection with the transferred subjects.  
Remarks made against item 28 apply to this also.
- 
30. ,, J. Crerar moved the resolution on the 16th Sept, 1925, Reg. the Standing Committees to deal with Bills relating to Hindu and Muslim Law.  
Remarks made against item 28 apply to this also.
- 
31. ,, A. H. Ley moved the resolution on the 10th Feb, 1926, Reg. the Ratification of the Draft Convention of the Int Labour Conf. Concerning workmens compensation for occupational diseases .  
The resolution was accepted. No action was require, as the Indian workmen's Compensation Act was already amended to bring it into conformity with the convention.
-



V

32. ,, D.T.Chadwick moved the resolution on 10th Feb, 1926, Reg. the Continuation of the imposition of a Customs duty on lac.  
R Accepted by the Govt of India.
- 
33. ,, K.C.Roy. moved the resolution on 15th Feb, 1926 Reg. the Royal Commission on Agriculture.  
The correspondence between the Secretary of State and the Govt of India and between the latter and Local Govts was laid on the table.
- 
- 34.,,, D.T.Chadwick moved the resolution on 23rd Feb, 1926, Reg. the Grant of supplementary assistance to tinplate Industry.  
Accepted by the Govt of India .
- 
35. ,, G.S.Khaparde moved the resolution on 15th March, 1926 Reg. the Salaries of the two members of the Judicial Committee of the Privy Council with Indian experience.  
The Appellate Jurisdiction Act was passed in 1929 accordingly.
- 
36. ,, Sir Md.HabibUllah moved the resolution on 23rd March, 1926, Reg. the Emigration of Indian Unskilled labourers to British Guiana.  
The resolution was transmitted to the Secretary of State and to the Govt of Br. Guiana. No further action was required.
- 
37. ,, Sir Haroon Jaffer moved the resolution on 10th March and 23rd Aug. 1926, Reg. the Banking legislation .  
Banking Committee was appointed in 1929, and a statement showing the action taken on their recommendations was laid on the table.
- 
38. ,, V.Ramadas Pantulu moved the resolution on 9th Feb. 1927 Reg. the Modernisation in the use of "alcoholic liquors in local administrations under the direct control of the Govt of India.  
Examined. No action taken.
- 
39. ,, Mahmood Suhrawardy moved the resolution on 9th Feb, 1927, Reg. the Appointment of a Committee to examine the desirability of developing the Road system in India.  
The Committee was appointed in Nov, 1927, with Mr. Jaykar as Chairman and it submitted its report in 1928,
- 
40. ,, V.Ramadas Pantulu moved the resolution on 24th Feb, 1927, Reg. the Reduction of Agricultural indebtedness and establishment of Land Mortgage Banks.  
A copy of the debate was forwarded to all Local Govts. In the minor administration three Land Mortgage Banks were established in Ajmer - Merwara and the feasibility of opening one in Coorg was being explored.
- 
41. ,, V. Ramadas Pantulu moved the resolution on 3rd March, 1927, Reg. the Management and upkeep of fish-curing yards in the Madras Presidency  
Examined. No action was taken.



V

42. " V.Ramadas Pantulu moved the resolution Reg. the provision of further facilities for military training to students in Indian Universities.  
Further facilities were provided. Attention was invited to the Army Department Resolution published in the Gazette of India 20th August, 1927.
- 
43. " Sir Haroon Jaffer moved the resolution Reg. the provision of Tuberculosis Hospitals, Sanatoria, and institutions for training ~~practitioners~~ practitioners in the treatment of Tuberculosis. Dated 7th March, 1927.  
As Local Governments, who were asked to send their views on the subject, were not unanimous as to the utility of the proposed conference to discuss the question, it was decided to postpone the conference 'Sine die'.
- 
44. " Sir Haroon Jaffer moved the resolution on 9th March, 1927, Reg. the control of the craze for medicinal drugs.  
Drugs Enquiry Committee was appointed in 1930. The Committee submitted its report which was to be considered after the receipt of the views of Local Governments who were addressed in the matter.
- 
45. " Anugraha Narayan Sinha moved the resolution on 9th March, 1927, Reg. the amendment of the Indian Forest Act, 1878,  
As Local Governments opposed the suggestion, the matter was dropped.
- 
46. " V.Ramadas Pantulu moved the resolution on 21st March, 1927 Reg. the Censorship and Control over Cinemas and other resorts of amusement.  
Effect was given to this resolution by the appointment of the Indian Cinematograph Committee, according to the Home Department resolution No. D 4169 dated the 6th October, 1927.
- 
47. " R.B.Lala Ram Saran Das moved the resolution on 21st March, 1927, Reg. the Assignment of a suitable place in the warrant of precedence to members of the Council of State.  
As the warrant indicates the position of ~~all~~ officials 'interse' the question of including members of the Council could not be pursued.
- 
48. " Sir Mohd. Habibullah moved the resolution on 15th September, 1927, Reg. the inspection of emigrants and protection of emigrant women and girls on boardship.  
The resolution was accepted by the Govt. of India.
- 
49. " H.G.Haig moved the resolution on the 15th Sept. 1927, Reg. the Cinematograph Film's censorship.  
Accepted by the Govt. of India.
-



## VI

50.     ""     Sir Geoffrey Corbett moved the resolution on 20th Sept. 1927, Reg. the ratification of the Draft Convention concerning (i) Seamen's articles of agreement and (ii) the repatriation of Seamen.  
Accepted by the Govt. of India.
- 
51.     "     Sir Geoffrey Corbett moved the resolution on 20th Sept. 1927, Reg. the Recommendations concerning (i) the repatriation of masters and apprentices and (ii) the general principles for the inspection of the conditions of work of Seamen.  
Accepted by the Govt. of India.
- 
52.     "     Sir Feroz Sethna moved the resolution on 13th Feb. 1928, Reg. the appointment of Trade Commissioners or Commercial Attaches to the colonies and in Europe and America.  
The Govt. of India appointed with the approval of the Secy. of State on a temporary basis the Indian Trade Commissioners in Hamburg, Milan, New York, Alexandria, Durban, and Mombasa, and Indians were ~~xxxx~~ to be appointed on these posts as far as possible.
- 
53.     "     P.C.D.Chari moved the resolution on 22nd Feb. 1928, Reg. the appointment of the Indian Statutory Commission.  
Full effect was given.
- 
53.     "     A.C.Mc Watter moved the resolution on 20th March, 1928, Reg. the non-ratification of the Draft Convention adopted by the International Labour Conference on the subject of sickness insurance.  
The resolution was accepted by the Govt. of India.
- 
54.     ""     Sir Phiroze Sethna moved the resolution on 17th Sept. 1928, Reg. the report of the Agricultural Commission.  
The report was considered by the Govt. of India and the action was taken.
- 
55.     ""     G.S.Khaparde moved the resolution on 17th Sept. 1928, Reg. the Revision of the Time Test in the Post Offices.  
A Committee was appointed under Mr. G.V.Bewoor, Post Master-General in Oct. 1928, to consider and report the matter. Its recommendations regarding the revision of the Time Test were accepted by the Govt. of India.
- 
56.     ""     Rai Bahadur Lala Ram Saran Das moved the resolution on 27th Feb., 1929, Reg. the Import and Manufacture of solidified vegetable oil.  
Local Govts. were against any action to be taken by the Govt. of India, and so the latter dropped the matter.
- 
57.     ""     T.Rayan. moved the resolution on 24th and 26th Sept. 1929 Reg. the fixation of minimum wages in certain trades.  
Accepted, required no action.



## VII

58.    "    Sir Sankaran Nair  
~~XXXXXX~~ moved the resolution on 19th Feb. 1930, Reg. the  
 announcement by the Governor General on the Constitutional Progress  
 in India.  
       Full effect was given.
- 
59.    "    J.A. Shillidy moved the resolution on the 4th March, 1930, Reg. the  
 Road Development.  
       Full effect was given.
- 
60.    "    J.A. Shillidy moved the resolution on 10th March, 1930, Reg. the  
 recommendations of the Int. Labour Conference concerning the  
 prevention of Industrial accidents.  
       Partly accepted by the Council and given effect to by the  
 Govt. of India.
- 
61.    "    Surpat Singh moved the resolution on 11th March, 1930, Reg. the  
 slump in Govt. Securities.  
       Govt. was shaping their Financial Policy according to the  
 resolution.
- 
62.    "    J.A. Woodhead  
~~Rama Swami Mudaliar~~ moved the resolution on 15th July, 1930, Reg. the  
 protection against accidents of workers in loading and unloading  
 ships.  
       Accepted by the Govt. of India.
- 
63.    "    Rama Swami Mudaliar moved the resolution on 20th March, 1930, Reg. the  
 date of the convening of the Round Table Conference.  
       Full effect was given.
- 
64.    "    J.A. Woodhead moved the resolution on 15th July, 1930, Reg. the marking  
 of the weight on heavy packages transported by vessels.  
       Accepted and the Draft Convention was ratified.
- 
65.    "    J.A. Woodhead moved the resolution on 28th Feb. 1931, Reg. the  
 continuance of the increased import duties on galvanised iron and  
 steel pipes and sheets etc.  
       Accepted and action was taken accordingly.
- 
66.    "    Syed Abdul Hafiz moved the resolution on 18th March, 1932, Reg. the  
 Constitution of a Central Jute Committee.  
       The proposal was under consideration.
- 
67.    "    Sir Joseph Bhore moved the resolution on 29th March, 1931, Reg. the  
 Regulation of the hours of work in Commerce, Offices, Hotels and  
 Restaurants etc.  
       Accepted, required no action.
-



# VIII

68.    ""    Sir C.P.Rama Swami moved the resolution on 24th Sept. 1931, Reg. the Travelling and Daily Allowances of the Members of Council of State.  
Accepted, and the rules regulating Allowances amended accordingly.
69.    ""    A.Brebner moved the resolution on 28th Sept. 1931, Reg. the utilization of the apportionment made from among Governors Provinces and minor Administration in the Road Development Account.  
The Govts. of Bombay, the Punjab, C.P and Assam had so far availed themselves of the facilities ~~was~~ afforded by the resolution.
70.    ""    H.W.Emerson moved the resolution on 5th Oct. 1931, Reg. the Recommendation of the Int. Labour Conference concerning forced and compulsory labour.  
Local Govts. were asked to amend the local Acts accordingly, and the Central Govt. was considering the amending of the Acts.
71.    ""    J.A.Shillidy moved the resolution on 2nd March, 1932, Reg. the hours of work in coal mines.  
Accepted, Local Govts. were addressed on the subject in Sept. 1932.
72.    ""    J.A.Shillidy moved the resolution on 24th March, 1932, Reg. the amendment of the resolution on roads adopted by the Council on the 4th March, 1930.  
Necessary action was taken.
73.    ""    J.C.B.Drake moved the resolution on 24th March, 1932, Reg. the increased Import Duties imposed on galvanised iron and steel pipes and sheets.  
Notification No. 260 T 135, dated 30th March, 1932 was issued continuing the increased duties on the above articles.  
~~This information~~

The information given here in this Appendix is taken from the Council of State Debates ( Official Report ) Dated the 27th March, 1933.



APPENDIX C.

An Extract from the debates of the Council of State, held on 22nd March 1938, on the Indian Finance Bill, 1938.

THE Honble Mr. J.C.Nixon ( Finance Secretary ) : Sir I move :

" That the bill to fix the duty on salt manufactured in, or imported by land into, certain parts of British India, to fix ~~minimum~~ maximum rates of postage, under the Indian Post Office Act, 1898, and to fix rates of income-tax and super-tax, in the form recommended by the Governor General, be taken into consideration."

Sir, I do not think the occasion makes it advisable or necessary for me to enter into a long statement. The circumstances of the last week or so are fresh in the minds of Honble Members of the Council. The Governor General in Council thought it proper in the circumstances to restore all and completely the Grants which had been rejected in the Lower House. Consequently, in order to carry on the business of Government, the Govt. require all those resources which were indicated to the Legislature in the original Budget statement presented to both Houses. Those resources were intended to be obtained by the passing of the Finance Bill. The Finance Bill in the original form and in its recommended form were, as Hon'ble Members know, rejected by the Lower House and I now now that the Bill, in the form recommended by the Governor General be taken into consideration in this House. Since the original figures were put before the Two Houses, a certain number of further revenue returns have come before Government and I can give an assurance to the House that nothing that these returns have taught us indicates that Govt. can carry on its activities with anything less than the resources which are covered by the Finance Bill. The Finance Bill merely proposes to carry on the status quo. It imposes no fresh taxation and it proposes no reduction of taxation.

Sir, I move.

THE Hon'ble Rai Bahadur Lila Ram Saran Das ( Punjab Non - Mohamadan ) : Sir, I rise to make a statement on behalf of my party. For reasons already stated, our Party has decided not to participate in the discussion of the Finance Bill or to remain inside the House during its discussion, but it will vote against the Bill.

THE Hon'ble Ramdas Pantulu ( Madras : Non - Mohamadan ) : Sir, my Party has ~~decided~~ also decided not to participate in the debate on the Finance Bill. We have already given our reasons for not participating in the discussion on the Budget. The same reasons apply to ~~xxx~~ justify our attitude on this occasion. Moreover, Sir, I wish to add that no useful purpose will be served by considering the Bill in its certified form, for no change can be made in it ----

THE Hon'ble the President: Then you are making a speech on the Motion. You cannot blow hot and cold at the same time.

THE Hon'ble Mr. Ramadas Pantulu : I am giving the reasons for not participating -----.

THE Hon'ble The President : That is a speech on the Motion itself. If you express any opinion on the Motion, then it is a speech, and yet you say do not want to participate in the debate.

THE Hon'ble Mr. Ramadas Pantulu: What I am saying is that in addition to the reasons already given, an additional reason to ~~days~~ is that we cannot make any change in a certified Bill. Therefore, for this reason also we do not wish to participate. That is not a debate on merits.



## II

THE Hon'ble The President : Whatever that may be, it is a speech.  
( At this stage the Members of the Progressive and Congress Parties  
walked out )

THE Hon'ble Mr. R.H.Parker and Sir A.P. Patro~~k~~ made short  
speeches supporting the Motion. The Hon'ble Maharaja Dhiraj of  
Darbhanga in his ~~a~~ speech put certain questions to the official  
benches and said that his attitude towards the Bill will be decided  
by the answers given by the Govt. to those questions.

.....

THE Hon'ble The President : Motion made

" That the Bill to fix the duty on salt manufactured in, or imported  
by land ~~into~~ into ....., be taken into consideration."

( All the Members present in the House, with the exception  
of the Hon'ble Mr. Hossain Imam who walked into the House and took ~~h~~  
his seat as the question was being put, said " Aye "; the  
Hon'ble Mr. Hossain Imam said " No ". )

THE Hon'ble the President: I shall not permit a division on  
this occasion, because it is in the discretion of the President to  
refuse a division when he knows it is only for a purpose and not  
with the deliberate object of obtaining the real opinion of the  
Members of the House. The Hon'ble Member is the one Member of the  
Party who is present~~.....~~

( While the Hon'ble the President was speaking four or five  
other Members of the Progressive Party had walked in and taken their  
seats and they interrupted to say, " We are here ". )

----- and his Leader made an ~~an~~ announcement distinct enough that  
they were not going to take ~~ay~~ any part in the debate. If they had  
wanted only to vote they ought to have come into the House in time for  
me to make the Motion to the House which they did not do. Only one  
Member was present ~~clearly that~~ and the Council has responded ~~clearly~~  
clearly that the Motion should be adopted. I will therefore not ask  
the Council to divide and the Motion is adopted.

The Motion was adopted.

THE Hon'ble R.D.Lala Ram Saram Das : But, Sir some of us here.  
Several Hon'ble Members : Order, Order.

THE Hon'ble Mr. Hossain Imam : May be submit most humbly-----

THE Hon'ble The President: The Question is :

" That the schedule stands part of the Bill ".

( The Hon'ble Members who had returned and taken their seats  
kept on ~~calling~~ calling " No " to the " Ayes " from the rest of the Council )

THE Hon'ble the President: I must say that this is an  
unbecoming procedure altogether for elder statesmen and for the  
Second Chamber in the British Empire. It is such an undignified proc-  
edure. I did not wish to say a word on this subject, but the way in  
which some of the elder statesmen have behaved in this House makes it  
imperative on my part to refer to this matter. I have already  
disallowed a division in my discretion as I think it was only for the  
purpose of sport rather than to ascertain the deliberate expression of  
the House. I have already done so once and regarding this I also



### III

THE Hon'ble Mr. Hossain Imam: May we enquire under what role of business?

THE Hon'ble the President: It is in the discretion of the President in certain cases when the object is not really to ascertain the opinion of the Members of the House but only for the purpose of provoking some sort of interruption, and I may tell you that during my long experience in this House there have been one or two Precedents which Sir Henry Moncrieff Smith adopted and I am following my predecessors example.

THE Hon'ble Mr. Hossain Imam: May I humbly submit that the rules are mandatory.

Several Hon'ble Members: The Chairman's ruling cannot be questioned.

THE Hon'ble Pdt. Hirday Nath Kunzru : It is not question of ruling. What you have said amounts not to a ruling but to a reflection on our conduct in protesting against Government's action ( Cries of " Order, Order ". ) The Chair is not acting within the rules and regulations in this matter. The Chair is going beyond its province in reflecting on our political procedure here. It is entirely for the non-official parties to decide what course ----- ( Cries of Order, Order and other interjections ) - of action we should adopt and if our protest is to be regarded as undignified by you, we have the right to ~~xx~~ protest against your remarks.

THE Hon'ble The President: As the Hon'ble Sir A.P. Patro remarked this morning after you went out of the House you have every right to enter a protest against the Bill in an unqualified manner; there are no two opinions about your right to enter a protest. But the question is the way in which the Hon'ble Members have conducted themselves. That justifies the Chair in making certain allusions to it. The whole thing to my mind is absolutely undignified for the occasion.

THE Hon'ble Pdt. Hirday Nath Kunzru : We have created no disturbance in the House. We have chosen a certain method of giving expression to our protest and that the Chair should go so far as to say that that method of protest is wrong, is highly objectionable.

THE Hon'ble The President: I did not say it is right or wrong

-----  
THE Hon'ble Hirday Nath Kunzru : We have not disturbed the proceedings of the House in the slightest degree. It is entirely out of consideration for you that we chose a method of protest which would leave the other Hon'ble Members undisturbed in their work. But now you have gone so far as to condemn us and even to refuse a division at our ~~xxxx~~ request. Is it permitted by any rule or regulation? You are going too far in gagging us.

THE Hon'ble The President : Is it fair to the House that you should ask for a division when you did not take part at all in the debate? ~~xx~~

THE Hon'ble Pdt. Hirday Nath Kunzru : Not at all.  
( At this stage several Hon'ble Members began to speak )  
Hon'ble Members : Order, Order, The Chair.

THE Hon'ble Mr. Hossain Imam: I want your ruling on this subject, a final and permanent ruling.



#### IV

THE Hon'ble The President: I do not give rulings on hypothetical questions. I have expressed my personal opinion. You should remember that the President is as much entitled to speak on any Motion under the Standing Orders and under the Rules on every question, every Resolution if he wishes, and I have expressed my opinion on the question. I am also a Member of the House. Being the President does not disqualify me from expressing my personal opinion on the subject.

THE Hon'ble R.B.Lala Ram Saran Das : Sir, when I made the Statement-----

THE Hon'ble The President: I think now you are certainly disturbing the order of this House by each one of you getting up and making speeches.

THE Hon'ble Mr. Hossain Imam : We want your ruling. Our remaining here or not depends on your ruling. We want to know whether under the rules we are entitled to have a division?

THE Hon'ble The President: I have only expressed my opinion that it is not a dignified procedure for this House to adopt. Our Hon'ble Member has said in your absence on this ~~xxx~~ point and I am entitled to express my opinion.

to  
THE Hon'ble Ptd. Hirday Nath Kunzru: Are we to have the division that is our due or not?

THE Hon'ble The President: You have not participated in the debate.

THE Hon'ble Hirday Nath Kunzru: We may not. The rules and regulations permit us to challenge a division, though we may remain absolutely silent.

THE Hon'ble The President: As I say, it is deliberately to cause a disturbance. It has been ruled in the past that the President in his discretion may not sanction a division. I am following that procedure.

THE Hon'ble R.B.Lala Ram Saran Das: The object of our calling a division is to show the people of India how many elected members of this House who constitutionally represent them vote for it or against it.

THE Hon'ble The President: Others have refused to come in.  
~~The~~

THE Hon'ble Hirday Nath Kunzru: It is their lookout.

THE Hon'ble Sir Ramunni Menon : Sir as there seems to be a lot of ~~xxxxx~~ confusion over this matter and there seems to be a good deal of misunderstanding also, may I beg of you to permit them to explain their position so that you might give your considered opinion on their request? I am sure they never intended to show any disrespect to the Chair or to behave in a manner derogatory to the dignity of the House.

THE Hon'ble The President: But I gave them an opportunity to express an opinion.

THE Hon'ble Sir Ramunni Menon: They seem to be in an excited mood.



THE Hon'ble The President: I consider as one occupying the Chair that it is disrespect to the Chair also that Hon'ble Member should leave the House unceremoniously in that way and come in and ask for a division.

THE Hon'ble Mdt. Hirday Nath Kunzru: We were entirely within our rights in doing so.

THE Hon'ble Prince Afsar-ul-Mulk Mirza Mohd. Akam Husain - Bahadur : The point whether the ~~sence~~ sense of the House is with you as the President - whether a division should be taken on this point or not ? I believe the sense of the House ~~is~~ is with you, and if that is so, a division need not be taken at all. T

THE Hon'ble Mdt. Hirday Nath Kunzru: The majority I suppose wants that a division should not be taken, but it has no power to do so.

THE Hon'ble Mr. Hossain Imam: As Sir Ramunni Monon has said, there was no intention of casting any ~~reflection~~ reflection on either the Chair or on the House. Our protest was primarily, mainly and only directed against the Govt. of India, and therefore, Sir, I hope you will reconsider your ruling in the light of the fact that we never meant to cast any reflection on you. As a matter of fact walk outs are never ~~meant~~ meant in such instances to be a reflection either on the Chair or on the House but they are against the action of Govt.

THE Hon'ble The President: You cannot say that. Your overt act shows that you wanted this to show disrespect to the Chair and also to Hon'ble Members who are here.

Hon'ble Members: No, Sir.

THE Hon'ble Sir Jagdish Prasad: ( Leader of the House ): May I suggest for your consideration that we might adjourn the House ~~goix~~ for a quarter of an hour which will also enable us to think over the matter. If you have no objection, Sir, you might adjourn the Council for a quarter an hour.

THE Hon'ble the President: I would like to take the ~~sense~~ sense of the House whether they would like me to adjourn for a quarter of an hour or whether I should allow a division or not. I will adopt either of the courses which they think right.

THE Hon'ble Sir Jagdish Prasad: I think Sir, the sense of the House is that we should adjourn for a quarter of an hour.

THE Hon'ble the President: The House will meet again at Ten Minutes to Twelve of the Clock.

The Council then adjourned till Ten Minutes to Twelve of the Clock.

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The Council reassembled at Ten Minutes to Twelve of the Clock, the Hon'ble the President in the Chair.



## VI

THE Hon'ble RLB Lala Ram Saran Das: Sir, I wish to state on behalf of my Party, that any action taken by us, was by way of protest against the action of the Governor General in Council in withholding certain Demands from the vote of the Central Legislature. Our action was in no sense intended as a discourtesy to yourself, with whom our relations have ~~always~~ always been cordial, or to this Hon'ble Council. We now hope that as we desire to challenge a division, you will kindly direct that a division be taken.

THE Hon'ble the President: I may point out to this House that the decision which I took a few minutes ago in ~~six~~ disallowing a division was based on Precedent. It has been ruled by predecessors of mine that the grant of permission for divisions is within their discretion. And on several occasions they have disallowed divisions when ~~asked~~ asked on frivolous ground. I would only point out one occasion to you in 1922 when no less distinguished a President than Sir Alexander Muddiman stated that the request for a division was frivolous and he disallowed it. And there are several subsequent rulings on this point by his successors supporting his ruling.

In view of the statement now made by the Leader ~~of~~ of Opposition and particularly as I see a large number of Hon'ble Members have now resumed their seats to participate in a division that puts a different complexion on this sad and unpleasant incident and I shall allow a division on the Question that the Schedule stand part of the Bill.

Question put : the Council divided:

AYES - 27  
NOES - 16

.....



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